

A05-320

STATE OF MINNESOTA

IN SUPREME COURT

---

State of Minnesota,

Respondent,

vs.

Demetrius Devell Dobbins,

Appellant.

---

RESPONDENT'S BRIEF

---

LESLIE J. ROSENBERG  
Assistant State Public Defender  
Office of the State Public Defender  
2221 University Avenue Southeast  
Suite 425  
Minneapolis, MN 55414  
(612) 627-6980

Attorney for Appellant

MIKE HATCH  
Minnesota Attorney General  
1800 NCL Tower  
445 Minnesota Street  
St. Paul, Minnesota 55101-2134

ROBERT M.A. JOHNSON  
Anoka County Attorney

BY: MARCY S. CRAIN  
Assistant Anoka County Attorney  
License No. 134326  
Anoka County Government Center  
2100 Third Avenue, 7th Floor  
Anoka, Minnesota 55303  
(763) 323-5672

Attorneys for Respondent

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
PROCEDURAL HISTORY.....	1
LEGAL ISSUES.....	3
STATEMENT OF THE CASE.....	5
STATEMENT OF FACTS.....	5
ARGUMENT.....	21
I.    The trial court did not err when it determined that the prosecutor’s peremptory strike of a minority prospective juror was made for legitimate, non-discriminatory reasons.....	21
II.   The defendant’s right to confrontation was not violated when the court prohibited him from cross-examining a witness regarding the exact number of months his sentence was potentially reduced under the terms of his plea agreement.....	27
III.  The trial court did not err by failing to give a jury instruction about accomplice testimony regarding the defendant’s girlfriend, Convona Sims, where Convona was not an accomplice, the defendant did not request such an instruction, and the omission of this instruction did not have a significant impact on the verdict.....	29
IV.  When considered in light of the whole trial, the defendant was not denied his right to a fair trial by the prosecutor’s cross-examination of the defendant or by one sentence in the state’s closing argument that used the subjective “I.”.....	33
CONCLUSION.....	40

## TABLE OF AUTHORITIES

	Page
<b>Minnesota Cases</b>	
<i>State v. Blanche</i> , 696 N.W.2d 351 (Minn. 2005) .....	37
<i>State v. Buggs</i> , 581 N.W.2d 329 (Minn. 1998) .....	34
<i>State v. Cabrera</i> , 700 N.W.2d 469 (Minn. 2005) .....	36
<i>State v. Daniels</i> , 361 N.W.2d 819 (Minn. 1985) .....	29
<i>State v. DeRosier</i> , 695 N.W.2d 97 (Minn. 2005) .....	33
<i>State v. DeVerney</i> , 592 N.W.2d 837 (Minn. 1999) .....	27, 28
<i>State v. Everett</i> , 472 N.W.2d 864 (Minn. 1991) .....	37
<i>State v. Greenleaf</i> , 591 N.W. 2d 488 (Minn. 1999) .....	4, 28
<i>State v. Griller</i> , 583 N.W.2d 736 (Minn. 1998) .....	4, 37
<i>State v. Ihle</i> , 640 N.W.2d 910 (Minn. 2002) .....	29
<i>State v. Lee</i> , 683 N.W.2d 309 (Minn. 2004) .....	29
<i>State v. Martin</i> , 614 N.W.2d 214 (Minn. 2000) .....	25
<i>State v. McCullum</i> , 289 N.W.2d 89 (Minn. 1979) .....	34
<i>State v. Palubicki</i> , 700 N.W.2d 476 (Minn. 2005) .....	4, 30
<i>State v. Pilot</i> , 595 N.W.2d 511 (Minn. 1999) .....	33, 35
<i>State v. Powers</i> , 654 N.W.2d 667 (Minn. 2003) .....	4, 33
<i>State v. Reiners</i> , 664 N.W.2d 826 (Minn. 2003) .....	21
<i>State v. Shoop</i> , 441 N.W.2d 475 (Minn. 1989) .....	29, 30
<i>State v. Strommen</i> , 648 N.W.2d 681 (Minn. 2002) .....	30
<i>State v. Taylor</i> , 650 N.W.2d 190 (Minn. 2002) .....	21, 22
<i>State v. White</i> , 684 N.W.2d 500 (Minn. 2004) .....	26
<i>State v. Whittaker</i> , 568 N.W.2d 440 (Minn. 1997) .....	35
<i>Ture v. State</i> , 681 N.W.2d 9 (Minn. 2004) .....	33, 37
<b>Statutes and Rules</b>	
Minn. R. Crim. 26.02, subd. 6a(3) .....	25
Minn. Stat. § 609.05 (2004) .....	1, 4, 28, 30
Minn. Stat. § 634.04 (2004) .....	30
Minn. Stat. § 609.185(1) (2004) .....	1, 5

**Other Authorities**

ABA Standards Relating to the Prosecutor's Function,  
3-5.8(b) and Commentary (1979)..... 37

**Federal Cases**

*Agard v. Portuondo*, 117 F.3d 696 (2d Cir. 1997) ..... 34  
*Batson v. Kentucky*, 476 U.S. 79 (1986)..... 3, 21, 22, 24, 25  
*Delaware v. Fensterer*, 474 U.S. 15 (1985) ..... 4, 28  
*Hernandez v. New York*, 500 U.S. 352 (1991) ..... 3, 22  
*Kentucky v. Stincer*, 482 U.S. 730 (1987) ..... 28  
*Purkett v. Elem*, 514 U.S. 765 (1995)..... 22

A05-320

**STATE OF MINNESOTA  
IN SUPREME COURT**

---

**State of Minnesota,**

**Respondent,**

**vs.**

**Demetrius Devell Dobbins,**

**Appellant.**

---

**PROCEDURAL HISTORY**

---

1. December 5, 2003: Date of offense.
2. January 6, 2004: Grand Jury indictment returned in Anoka County District Court charging defendant with First-Degree Murder (Premeditated) in violation of Minn. Stat. §§ 609.185(1) and 609.05 (2004).
3. October 22, 2004: Jury trial commenced, the Honorable Nancy J. Logering, Judge of Anoka County District Court presiding.
4. November 5, 2004: Jury found defendant guilty of First-Degree Murder as charged.
5. November 15, 2004: Court sentenced defendant to life imprisonment.
6. February 14, 2005: Notice of Appeal filed in Minnesota Supreme Court.

7. August 11, 2005: Appellant's brief filed.
8. October 19, 2005: Respondent's brief filed.

A05-320

STATE OF MINNESOTA  
IN SUPREME COURT

---

State of Minnesota,

Respondent,

vs.

Demetrius Devell Dobbins,

Appellant.

---

LEGAL ISSUES

---

1. **Did the trial court err when it determined that the prosecutor's peremptory strike of a minority prospective juror was made for legitimate, nondiscriminatory reasons?**

The lower court ruled in the negative.

*Apposite Authority:*

*Batson v. Kentucky*, 476 U.S. 79 (1986)

*Hernandez v. New York*, 500 U.S. 352 (1991)

2. **Was the defendant's right to confrontation violated when the court prohibited him from cross-examining a witness regarding the exact number of months his sentence was potentially reduced under the terms of his plea agreement?**

The lower court ruled in the negative.

*Apposite Authority:*

*State v. Greenleaf*, 591 N.W. 2d 488 (Minn. 1999)

*Delaware v. Fensterer*, 474 U.S. 15 (1985)

3. **Did the trial court err by failing to give a jury instruction about the defendant's girlfriend, Convona Sims, being an accomplice where the defendant did not request such an instruction, Convona was not an accomplice and the omission of this instruction did not have a significant impact on the verdict?**

The lower court was never asked to rule.

*Apposite Authority:*

Minn. Stat. § 609.05, subd. 1 (2004)

*State v. Palubicki*, 700 N.W.2d 476 (Minn. 2005)

4. **When considered in light of the whole trial, was the defendant's right to a fair trial impaired by the prosecutor's cross-examination questions of the defendant or by one sentence in the state's closing argument that used the subjective "I?"**

The lower court ruled in the negative.

*Apposite Authority:*

*State v. Griller*, 583 N.W.2d 736 (Minn. 1998)

*State v. Powers*, 654 N.W.2d 667 (Minn. 2003)

### STATEMENT OF THE CASE

On December 5, 2003, Q [REDACTED] R [REDACTED] L [REDACTED] was shot to death in the city of Columbia Heights in Anoka County. A grand jury indicted the defendant, Demetrius Devell Dobbins for First-Degree Murder (Premeditated)<sup>1</sup> in L [REDACTED]'s death. Following a jury trial before the Honorable Nancy L. Logering, Judge of Anoka County District Court, Dobbins was found guilty as charged. Thereafter, the court sentenced him to the custody of the Commissioner of Corrections for a life term. This direct appeal followed.

### STATEMENT OF FACTS

In the summer of 2005, the defendant Demetrius Devell Dobbins, age 22 lived with his girlfriend, Convona Sims and Sims' four-year-old daughter D [REDACTED] at the home of Convona's friend, Billie.<sup>2</sup> The murder occurred at this home, located at [REDACTED] [REDACTED] in Columbia Heights.<sup>3</sup>

Dobbins made his money selling marijuana.<sup>4</sup> In the summer before the murder, Dobbins gave Q [REDACTED] L [REDACTED] nine bags of marijuana to sell.<sup>5</sup> He was supposed to sell each bag of marijuana for ten dollars, for a total of \$90.<sup>6</sup> The agreed-upon split was \$60 for Dobbins, \$30 for L [REDACTED].<sup>7</sup>

---

<sup>1</sup> See Minn. Stat. § 609.185(1) (2004)

<sup>2</sup> T. 1100, 1309, 1313-14. "T" refers to the trial transcript.

<sup>3</sup> T. 69-70.

<sup>4</sup> T. 1325.

<sup>5</sup> T. 1342.

<sup>6</sup> T. 1342-44.

<sup>7</sup> T. 1342, 1344-45

A couple of weeks later, L [REDACTED] made arrangements to meet Dobbins and give him the money.<sup>8</sup> Dobbins did not make it to the meeting, because he had other things to do.<sup>9</sup>

On the afternoon of December 5, 2005, Dobbins went downtown to the City Center to sell some marijuana.<sup>10</sup> Dobbins' cousin Andrea, Convona and D [REDACTED] also went.<sup>11</sup> At City Center, Dobbins met up with Myshohn King and Q [REDACTED] L [REDACTED].<sup>12</sup> Convona's sisters, Shiniqua Elting and Thaijuana Sims were also there.<sup>13</sup>

King and Convona heard Dobbins and L [REDACTED] talking or arguing about money.<sup>14</sup> Angrily, Dobbins asked L [REDACTED] if he had the money he owed.<sup>15</sup> L [REDACTED] seemed nervous.<sup>16</sup>

Dobbins told L [REDACTED] to get on the bus with him to go to Dobbins' house.<sup>17</sup> Although L [REDACTED] was at City Center with friends, none of his friends came along.<sup>18</sup>

When they arrived, Jeanne Stoddard, her then boyfriend Joshua Sims (Convona's brother) and cousin Greg Elting were there.<sup>19</sup> They sat at the table, while Sims and Elting bagged marijuana.<sup>20</sup>

---

<sup>8</sup> T. 1343.

<sup>9</sup> *Id.*

<sup>10</sup> T. 1348, 1350

<sup>11</sup> T. 1347-48

<sup>12</sup> T. 524-25

<sup>13</sup> T. 880-83

<sup>14</sup> T. 525-26, 1153-57.

<sup>15</sup> T. 526.

<sup>16</sup> *Id.*

<sup>17</sup> T. 527-28.

<sup>18</sup> T. 528.

<sup>19</sup> T. 923, 995, 1157-58.

<sup>20</sup> T. 998, 1007

Dobbins came into the room, borrowed someone's cell phone and went into the bathroom to make a call.<sup>21</sup> Convona told the police that she was able to hear Dobbins' side of the phone conversation.<sup>22</sup> Specifically, she heard him say, "Bring it," meaning a gun or firearm.<sup>23</sup>

L [REDACTED] stood up, wanting to talk with Dobbins.<sup>24</sup> Dobbins came out, told L [REDACTED] to sit down and returned to the bathroom.<sup>25</sup>

Dobbins asked Jeanne and Joshua for a ride to the store for some cigarettes.<sup>26</sup> They took him to the store and then dropped him off at home.<sup>27</sup> When Dobbins returned, he directed Convona and Andrea to go downstairs.<sup>28</sup> They went downstairs as directed.<sup>29</sup>

About 15 minutes later, Andre Coleman arrived, wearing white gloves.<sup>30</sup> Coleman and Dobbins then went into a back bedroom.<sup>31</sup> Still seated at the table were King and L [REDACTED].<sup>32</sup>

---

<sup>21</sup> T. 534-35.

<sup>22</sup> T. 1163-64.

<sup>23</sup> T. 1164-65. While Convona admitted telling this to the police, at trial she claimed she lied to the police about it. T. 1162, 1165.

<sup>24</sup> T. 536.

<sup>25</sup> *Id.*

<sup>26</sup> T. 1000.

<sup>27</sup> T. 1000-01.

<sup>28</sup> T. 557.

<sup>29</sup> *Id.*

<sup>30</sup> T. 552, 1168-69.

<sup>31</sup> T. 553, 1170.

<sup>32</sup> T. 568-70.

A few minutes later, Coleman came out and stood by the wall.<sup>33</sup> As soon as he came out, a radio was turned on, its volume loud.<sup>34</sup> L [REDACTED] looked nervous.<sup>35</sup> Not knowing what was going on, King was nervous, too.<sup>36</sup>

Coleman was no longer wearing the white gloves.<sup>37</sup> The defendant emerged from the room a minute or two later, wearing the gloves and a black leather coat.<sup>38</sup> While King sat in a chair about five to seven feet away, he watched as Dobbins raised his arm and shot L [REDACTED] twice in rapid succession.<sup>39</sup> L [REDACTED] was not armed.<sup>40</sup> King threw his hands over his face, while Coleman stood a couple of feet from Dobbins, looking scared.<sup>41</sup>

L [REDACTED] grabbed his stomach and fell to the ground.<sup>42</sup> Dobbins and Coleman went into the back room, while L [REDACTED] lay on the floor, holding his stomach and not moving.<sup>43</sup> The loud music was turned off after the shooting was done.<sup>44</sup>

Coleman then left, and Dobbins moved L [REDACTED]'s body to the bathroom.<sup>45</sup> Dobbins told King to clean up the blood.<sup>46</sup> King did as he was told, because he "wasn't

---

<sup>33</sup> T. 566.

<sup>34</sup> *Id.*

<sup>35</sup> T. 567.

<sup>36</sup> T. 568.

<sup>37</sup> *Id.*

<sup>38</sup> T. 568, 573.

<sup>39</sup> T. 568, 571-72.

<sup>40</sup> T. 550

<sup>41</sup> T. 570, 572-73.

<sup>42</sup> T. 574-75

<sup>43</sup> T. 574.

<sup>44</sup> T. 583.

<sup>45</sup> T. 573.

<sup>46</sup> T. 576.

gonna talk back. . . [H]e just saw a dude get shot.”<sup>47</sup> While the body lay in the bathroom for about 15 minutes, King tried to clean up the blood with a bucket, dish soap, some water and a couple of towels.<sup>48</sup>

About 30 minutes after the shooting, Thaijuana Sims and Shiniqua Elting pulled up in a car.<sup>49</sup> Dobbins approached the car and told Shiniqua that he did not want them to go in the house, explaining that there was something there he did not want the kids to see.<sup>50</sup> When Shiniqua pressed him on it, Dobbins told her there was a body in the house and that “[t]hey shot ‘em” (sic).<sup>51</sup> King and Thaijuana also heard Dobbins admit that he “shot ‘em” (sic).<sup>52</sup> Dobbins further explained that Coleman brought the gun to the house and left with it.<sup>53</sup> He also told Thaijuana that he turned up the music loud and then shot.<sup>54</sup> Dobbins explained that he shot the guy because he owed him money.<sup>55</sup>

Despite Dobbins’ warning, Shiniqua entered the house.<sup>56</sup> She saw and smelled the blood; it smelled like “rusty metal.”<sup>57</sup> There was a lot of blood on the floor in the front room and a body lying in the hallway.<sup>58</sup>

---

<sup>47</sup> T. 576-77.

<sup>48</sup> T. 577-78.

<sup>49</sup> T. 578, 582-83, 885, 956.

<sup>50</sup> T. 888.

<sup>51</sup> T. 890.

<sup>52</sup> T. 579, 957.

<sup>53</sup> T. 977.

<sup>54</sup> T. 976.

<sup>55</sup> T. 890.

<sup>56</sup> T. 890-91.

<sup>57</sup> T. 894.

<sup>58</sup> T. 894-95.

After being in the house for only about two minutes, Shiniqua went outside to get her sister Thaijuana.<sup>59</sup> Thaijuana accompanied Shiniqua back into the house.<sup>60</sup> When Thaijuana entered the house the second time, she saw the body in front of the bathroom door.<sup>61</sup>

Dobbins said he thought the body might still be alive and had seen it move.<sup>62</sup> He put his ear up to the body's mouth and listened after he said he thought the victim was still breathing.<sup>63</sup>

Thaijuana also saw blood and bleach.<sup>64</sup> Because she was scared, she talked to Dobbins to deal with her nerves.<sup>65</sup> She told him not to pour bleach on the blood spot and suggested he could burn the house.<sup>66</sup> She told him that so he would not think she was scared.<sup>67</sup> The body was then moved to the bath tub.<sup>68</sup>

When Shiniqua next saw the body, it was wrapped up in an air mattress like "he was in a taco or something."<sup>69</sup> King and Dobbins used the air mattress to carry the body from the bathtub to the backyard shed, with Dobbins at the body's head, King at its feet.<sup>70</sup>

---

<sup>59</sup> T. 896

<sup>60</sup> T. 897.

<sup>61</sup> T. 961.

<sup>62</sup> T. 902-03.

<sup>63</sup> T. 904-06.

<sup>64</sup> T. 960.

<sup>65</sup> T. 977.

<sup>66</sup> T. 978.

<sup>67</sup> *Id.*

<sup>68</sup> T. 504, 634-35.

<sup>69</sup> T. 898.

<sup>70</sup> T. 587-88, 965.

Meanwhile, Shiniqua loaded up about five bags of clothing from the house and took them to her dad's house.<sup>71</sup> At Dobbins' request, she also took some bags of his clothes to Coleman's house.<sup>72</sup>

Within a couple of hours, Thaijuana told her dad what happened.<sup>73</sup> Her dad called the police, put Thaijuana on the phone, and she talked with an Anoka County Central Communications dispatcher around 6:00 or 6:30 P.M.<sup>74</sup>

Thaijuana went back to Columbia Heights with her fiancée and drove around the crime scene for about 15 or 20 minutes, circling the blocks.<sup>75</sup> There, she saw Dobbins and King heading back toward the scene.<sup>76</sup> Thaijuana informed the dispatcher of this.<sup>77</sup> She also described the suspects' clothing; one wore a Phat Farm black coat and skull cap, the other a black and white jacket.<sup>78</sup> The dispatcher relayed the information to the police, including Thaijuana's cell phone number.<sup>79</sup>

Sergeant Lenny Austin of the Columbia Heights Police Department called Thaijuana's cell phone and spoke with her around 6:50 P.M.<sup>80</sup> Crying and in a loud voice,

---

<sup>71</sup> T. 900.

<sup>72</sup> T. 914.

<sup>73</sup> T. 142, 971.

<sup>74</sup> T. 142, 971, 978.

<sup>75</sup> T. 986.

<sup>76</sup> T. 84.

<sup>77</sup> See Exh. #3, pp. 6, 8.

<sup>78</sup> *Id.* at 7-8.

<sup>79</sup> T. 72-73.

<sup>80</sup> T. 73-74.

Thaijuana told him that the suspects were returning to the house.<sup>81</sup> She described the suspects and their clothing, which included long, black coats.<sup>82</sup>

Sergeant Austin and Officers Gregory Sinn and Beckett responded to the scene.<sup>83</sup> In the snow, it appeared as though something had been dragged from the house to the shed.<sup>84</sup> Shining their flashlights on the shed door, they saw red stains alongside its door, consistent with information they had that there may be a body in the shed.<sup>85</sup> Inside the shed was a body.<sup>86</sup>

As Officers Sinn and Beckett stood behind trees, they saw two males matching the description provided by Thaijuana, wearing long, black coats approaching the house.<sup>87</sup> When Officer Sinn approached the males, they were cooperative.<sup>88</sup>

One identified himself as Demetrius Dobbins, the other as Myshohn King.<sup>89</sup> Dobbins carried a small plastic convenience-store bag, which contained a can of lighter fluid.<sup>90</sup> Officer Sinn arrested Dobbins.<sup>91</sup>

After police arrested Dobbins, Sergeant Steven Johnson of the Anoka County Sheriff's Office Crime Lab processed the crime scene.<sup>92</sup> In the driveway of the home, he

---

<sup>81</sup> T. 78-80.

<sup>82</sup> T. 80, 85.

<sup>83</sup> T. 70, 82, 107.

<sup>84</sup> T. 132-33.

<sup>85</sup> T. 113.

<sup>86</sup> T. 93.

<sup>87</sup> T. 84-85, 114, 118

<sup>88</sup> T. 118, 120.

<sup>89</sup> T. 120-21.

<sup>90</sup> T. 122.

<sup>91</sup> T. 123, 126.

<sup>92</sup> T. 162, 165

saw a plastic bag that contained a large can of Kingsford lighter fluid and three smaller cans of cigarette-lighter-refill fluid.<sup>93</sup>

Bhaskar Joshi is the owner of the convenience store where the lighter fluid was purchased.<sup>94</sup> According to Joshi, two African-American men came into his store around 6:30 or 7:00 P.M. on December 5, 2003 and purchased the lighter fluid.<sup>95</sup>

In the snow, Sergeant Johnson observed drag marks from the rear door of the house to the front door of the shed and blood deposits in the snow.<sup>96</sup> There was blood on the outside of the shed door.<sup>97</sup> The victim was on the floor of the shed.<sup>98</sup> His face was discolored and pale, and there appeared to be red stains on his pants.<sup>99</sup> There was no weapon on his body.<sup>100</sup>

Inside the house, there was a large blood stain on the living room carpet under the table.<sup>101</sup> There were also blood stains in the shape of footwear imprints in the hallway carpet.<sup>102</sup> In the bathroom, a bloody mop leaned against the sink; the blood was still wet.<sup>103</sup>

---

<sup>93</sup> T. 176.

<sup>94</sup> T. 155.

<sup>95</sup> T. 156-58.

<sup>96</sup> T. 171, 230-31.

<sup>97</sup> T. 172.

<sup>98</sup> *Id.*

<sup>99</sup> T. 94.

<sup>100</sup> T. 270.

<sup>101</sup> T. 178-79, 274.

<sup>102</sup> T. 274.

<sup>103</sup> T. 309.

There were several large trash bags on the kitchen floor.<sup>104</sup> In the bags, was a blue pitcher containing rags heavily saturated with a dark red liquid, a pair of white cloth gloves, some bedding, a towel saturated with assumed blood and a hooded dark-blue sweatshirt.<sup>105</sup> One of the bags contained the Coleman double-wide inflatable mattress, on which there were presumptive blood stains.<sup>106</sup>

James Liberty, a forensic scientist employed by the Minnesota Bureau of Criminal Apprehension conducted DNA tests on some of the evidence found in this case.<sup>107</sup> The blood found on the living room floor and on the door to the shed matched the DNA profile from a known sample of the victim.<sup>108</sup>

Several items of clothing found in the trash bags had stains that matched the victim's DNA profile. The stain found on the defendant's pants and socks contained a mixture from two people; the predominant type matched the victim's DNA and the defendant could not be ruled out as the contributor of the weak type.<sup>109</sup>

Sergeant Steven Johnson of the Anoka County Sheriff's Office compared footwear impressions found on the air mattress and in the snow between defendant's house and the shed with the shoes the defendant wore at the time of his arrest.<sup>110</sup> After performing a series of tests and comparisons, Sergeant Johnson concluded that the shoes worn by the

---

<sup>104</sup> T. 183.

<sup>105</sup> T. 281-82, 310-11.

<sup>106</sup> T. 279-80.

<sup>107</sup> T. 682, 699.

<sup>108</sup> T. 709-10.

<sup>109</sup> T. 724-25, 730-31.

<sup>110</sup> T. 197, 217-20, 487, 492.

defendant at the time of his arrest could not be ruled out as having made the bloody footwear impressions in the snow at the crime scene and on the air mattress.<sup>111</sup>

Additionally, latent prints from the front edge of the bathroom sink at the crime scene and on the Kingsford charcoal lighter can matched the defendant's known fingerprints and palm prints.<sup>112</sup>

Detective Daniel Douglas found a stereo in a bedroom.<sup>113</sup> Without touching the volume control, the detective pushed the stereo's power button and a couple of other buttons.<sup>114</sup> When he did so, an uncomfortably loud static came over the speakers.<sup>115</sup>

Pursuant to a search warrant, police searched Coleman's home, which was less than a mile from the crime scene.<sup>116</sup> In Coleman's lower-level bedroom, police found a pair of blue jeans with patches on the legs bearing what appeared to be blood deposits.<sup>117</sup> Police also found some cocaine inside the toilet tank and a .25 caliber weapon inside a piñata.<sup>118</sup>

Gunshot-residue testing was conducted by Alfred J. Schwoeble, the manager of the forensic science department of RJ Lee Group in Monroeville, Pennsylvania.<sup>119</sup>

---

<sup>111</sup> T. 492, 496-98.

<sup>112</sup> T. 295-302.

<sup>113</sup> T. 1038.

<sup>114</sup> T. 1039.

<sup>115</sup> *Id.*

<sup>116</sup> T. 193.

<sup>117</sup> T. 194-96.

<sup>118</sup> T. 196-97, 1060.

<sup>119</sup> T. 314-15, 337-38.

Schwoeble tested hand swabbings from the defendant.<sup>120</sup> He found gunshot residue on swabbings taken from the defendant's hands, primarily his right one.<sup>121</sup>

Schwoeble also tested the defendant's clothing; specifically his black leather jacket and black cargo-style pants with Phat Farm logos.<sup>122</sup> Testing showed gunshot residue and lead-rich particles on both sleeves and the front of defendant's leather jacket.<sup>123</sup> There was also gunshot residue and lead-rich particles on the pants.<sup>124</sup> The black pants had twice as many particles on them as the other pants tested.<sup>125</sup>

Dr. Butch Huston is the forensic pathologist who conducted the autopsy on Q ██████ L ██████'s body.<sup>126</sup> At the time of death, the victim was between five-feet-five and five-feet-six inches tall and weighed 147 pounds.<sup>127</sup> His body had two gunshot wounds; one to the left mid to upper back and another to the front of his right thigh.<sup>128</sup> Two projectiles were removed from the victim's body.<sup>129</sup>

The gunshot wound to the back entered the left chest cavity, injuring the left lung.<sup>130</sup> There was hemorrhaging in the left pleural space between the chest wall and

---

<sup>120</sup> T. 348.

<sup>121</sup> T. 348-50.

<sup>122</sup> T. 247, 250-51, 353, 1190.

<sup>123</sup> T. 357-58, 361.

<sup>124</sup> T. 355-57.

<sup>125</sup> T. 361.

<sup>126</sup> T. 751, 754-55, 758.

<sup>127</sup> T. 761.

<sup>128</sup> *Id*

<sup>129</sup> T. 201

<sup>130</sup> T. 762.

lung tissue.<sup>131</sup> The second wound perforated the soft tissues of the thigh, then injured the femoral blood vessels that deliver blood to and from the leg.<sup>132</sup>

No soot or gunpowder residue was found on the victim's clothing or body, indicating they were not contact gunshot wounds.<sup>133</sup> Death was not instantaneous.<sup>134</sup> With no resuscitative efforts, the victim could have lived several minutes with those wounds.<sup>135</sup>

Dr. Huston ruled L [REDACTED]'s manner of death a homicide.<sup>136</sup> The cause of death was exsanguination due to gun shot wounds to the chest and leg.<sup>137</sup>

The defendant testified on his own behalf at trial. What follows is a summary of the defendant's testimony.

During the summer before the homicide, the defendant was downtown selling "weed."<sup>138</sup> His girlfriend was getting hungry, the drugs were selling well, and he was down to his last nine sacks.<sup>139</sup>

Downtown, the defendant saw Q [REDACTED] L [REDACTED], a "downtown kid," whom he had known for less than a year.<sup>140</sup> The defendant gave the nine sacks to L [REDACTED] to sell for ten dollars apiece.<sup>141</sup> They agreed that L [REDACTED] could keep \$30 and give the

---

<sup>131</sup> T. 762.

<sup>132</sup> *Id.*

<sup>133</sup> T. 765.

<sup>134</sup> T. 769.

<sup>135</sup> T. 770.

<sup>136</sup> T. 772.

<sup>137</sup> *Id.*

<sup>138</sup> T. 1340-42.

<sup>139</sup> *Id.*

<sup>140</sup> T. 1339-40.

<sup>141</sup> T. 1344.

remaining \$60 to the defendant.<sup>142</sup> Although they made plans to meet on the north side for the money transfer, the defendant failed to show up for the meeting.<sup>143</sup>

The next time the defendant saw L [REDACTED] after the failed meeting was on December 5, 2003.<sup>144</sup> That day, the defendant decided to go downtown to City Center to sell marijuana.<sup>145</sup> There, he saw L [REDACTED].<sup>146</sup> L [REDACTED] approached him to talk about the money he owed.<sup>147</sup>

According to the defendant, he took L [REDACTED] to his home, so that L [REDACTED] could make a phone call to make arrangements to get the money he owed.<sup>148</sup> The defendant told Coleman to come over, so that Coleman could give him a ride to pick up the money.<sup>149</sup>

When Coleman arrived, he went back to the defendant's bedroom.<sup>150</sup> To the defendant's surprise, Coleman was wearing gloves.<sup>151</sup> Coleman lifted his shirt, which revealed a gun.<sup>152</sup> Coleman then left the bedroom and went to the living room.<sup>153</sup>

In the meantime, the defendant stayed in his bedroom, ironing the Harlem Globetrotters outfit he planned to wear that night.<sup>154</sup> When the defendant was nearly done ironing, he heard a gunshot, ran out into the hallway and saw King fire a second

---

<sup>142</sup> T. 1342, 1345.

<sup>143</sup> T. 1345.

<sup>144</sup> T. 1345-46

<sup>145</sup> T. 1348.

<sup>146</sup> T. 1353

<sup>147</sup> *Id.*

<sup>148</sup> T. 1356.

<sup>149</sup> T. 1368.

<sup>150</sup> T. 1367.

<sup>151</sup> T. 1369

<sup>152</sup> T. 1372

<sup>153</sup> T. 1374

<sup>154</sup> T. 1370, 1374

shot into L [REDACTED].<sup>155</sup> The police did not find an iron or a Harlem Globetrotters outfit in the course of their investigation.<sup>156</sup>

The defendant suggested taking L [REDACTED] to the hospital, but also thought he may be faking it, because he saw no blood.<sup>157</sup> The defendant later saw a large pool of blood and “pretty much knew.”<sup>158</sup>

About an hour or two after the shooting, Shiniqua and Thaijuana came to the house.<sup>159</sup> He didn’t want them to see the body, so he helped carry it outside to the shed so he wouldn’t be linked to it.<sup>160</sup> The defendant denied making any remarks to them about shooting L [REDACTED].<sup>161</sup>

He walked a couple of blocks to the store to get lighter fluid to burn his clothes.<sup>162</sup> He had no idea how the blood got on his clothing.<sup>163</sup>

Denying that he had anything to do with L [REDACTED]’s murder, the defendant said, “to go kill somebody for \$60, what’s the purpose?”<sup>164</sup> According to the defendant, King and Coleman did it, “[T]hat’s for sure.”<sup>165</sup>

---

<sup>155</sup> T. 1375.

<sup>156</sup> T. 191, 1038.

<sup>157</sup> T. 1379-80.

<sup>158</sup> T. 1381.

<sup>159</sup> T. 1386-87.

<sup>160</sup> T. 1388-89.

<sup>161</sup> T. 1389.

<sup>162</sup> T. 1399-1400.

<sup>163</sup> T. 1455-56.

<sup>164</sup> T. 1437.

<sup>165</sup> T. 1422.

Apparently, the jury did not believe the defendant. It found the defendant guilty of first-degree murder, as charged. Thereafter, the court sentenced the defendant to the custody of the Commissioner of Corrections for a life term. This direct appeal followed.

## ARGUMENT

**I. The trial court did not err when it determined that the prosecutor's peremptory strike of a minority prospective juror was made for legitimate, non-discriminatory reasons.**

The defendant argues that the state's peremptory challenge of venireperson #181 was racially discriminatory in violation of the Equal Protection Clause, and he is thus entitled to a new trial. His argument is not supported by the facts or the law and should be rejected. The prosecutor struck the prospective juror for legitimate, nondiscriminatory reasons.

The existence of racial discrimination in the exercise of a peremptory challenge is a factual determination that is to be made by the district court and should be given great deference on review. *State v. Reiners*, 664 N.W.2d 826, 830 (Minn. 2003) (citing *State v. Taylor*, 650 N.W.2d 190, 200-01 (Minn. 2002)). The district court's factual determination will not be reversed unless it is clearly erroneous. *Id.* The district court's factual determination was not erroneous and is well-supported by the record.

Purposeful racial discrimination in selection of a jury violates a defendant's right to equal protection, because it denies him the protection that a trial by jury is intended to secure. *Batson v. Kentucky*, 476 U.S. 79, 86 (1986). While a defendant has no right to a petit jury composed in whole or in part of persons of his own race, he does have the right to be tried by a jury whose members are selected pursuant to nondiscriminatory criteria. *Id.* at 85-86 (citations omitted). As Justice Powell explained, "In view of the heterogeneous population of our Nation, public respect for our criminal justice system

and the rule of law will be strengthened if we ensure that no citizen is disqualified from jury service because of his race.” *Batson v. Kentucky*, 476 U.S. 79, 99 (1986).

To establish that a prosecutor has used peremptory challenges to exclude persons from the jury solely on the basis of their race, the defendant must first make a *prima facie* showing that establishes an inference of discriminatory purpose based on the facts of the case. *Id.* at 93-94. After a *prima facie* case is established, the prosecutor must articulate a race-neutral explanation for challenging jurors of the particular race. *Id.* at 98. The prosecutor’s explanation need not be persuasive or even plausible. *Purkett v. Elem*, 514 U.S. 765, 767-8 (1995). As long as the proffered explanation is facially valid and exhibits no discriminatory intent, the reason will be deemed race neutral. *Hernandez v. New York*, 500 U.S. 352, 358-59 (1991).

The first step of the analysis is to determine whether there is a *prima facie* case of discrimination. A *prima facie* case of racial discrimination in a peremptory challenge is established by showing: (1) that a member of a protected racial group has been peremptorily excluded from the jury; and (2) the circumstances of the case raise an inference that the exclusion was based on race. *State v. Taylor*, 650 N.W.2d 190, 201 (Minn. 2002).

The defendant is African American, as was the victim and many of the lay witnesses.<sup>166</sup> Venireperson #181 was the only African American in the potential jury pool of 74.<sup>167</sup> She was the first venireperson examined.<sup>168</sup>

While venireperson #181 was being examined by defense counsel, she revealed that her sister received a traffic ticket, and she “felt as though she was treated a little unjustly (sic) . . . maybe because of her color . . .”<sup>169</sup> Venireperson #181 explained that she felt bad for her sister, because although her sister tried to be honest, the officer decided she needed to get a ticket, which was “just an unfortunate part of life.”<sup>170</sup>

She also stated that her parents have done volunteer work in the prisons for about 26 years.<sup>171</sup> Their work with prisoners began when members of their church began visiting a church member’s son and “encouraging” him.<sup>172</sup>

Venireperson #181 said that she had gone with her parents to visit inmates and had prayer meetings with them.<sup>173</sup> According to venireperson #181, her parents “encourage them and just basically point them back to the Bible and help them with their morals . . .”<sup>174</sup>

In her view, some of these inmates end up in jail because of decisions that they make, drugs, “hanging with the wrong crowds,” or being “at the wrong place at the

---

<sup>166</sup> V. 64, 138.

<sup>167</sup> Voir Dire Questionnaire, Juror No. 181, p. 1; V. 138. “V” refers to voir dire transcript.

<sup>168</sup> V. 99.

<sup>169</sup> V. 106.

<sup>170</sup> V. 107.

<sup>171</sup> V. 110.

<sup>172</sup> *Id.*

<sup>173</sup> V. 119.

<sup>174</sup> V. 119.

wrong time.”<sup>175</sup> Others may be innocent, but “just happened to be caught with the people that were actually the guilty parties.”<sup>176</sup>

In addition to her work with inmates, Venireperson #181 explained that she had cousins with drug problems who had gotten in trouble with the law because of some “wrong choices.”<sup>177</sup>

The state exercised its first peremptory challenge with Venireperson #181.<sup>178</sup> The defense attorney made a *Batson* challenge on the basis that the only potential African-American juror was stricken, and that the prosecutor spent much time questioning her about race-related issues.<sup>179</sup>

The trial court found that the defense established a *prima facie* case of racial discrimination, since Venireperson #181 was the only African American in the prospective jury pool.<sup>180</sup> At the same time, the court noted that there had been no *pattern* of race-based strikes, since this was the first prospective juror examined.<sup>181</sup>

The prosecutor then articulated the basis for his peremptory strike of Venireperson #181:

1. She has clear sympathies for people who have been involved in the criminal justice system;
2. She speculated and guessed about why people were involved in the criminal justice system;

---

<sup>175</sup> V. 121.

<sup>176</sup> *Id.*

<sup>177</sup> V. 123.

<sup>178</sup> V. 137.

<sup>179</sup> V. 138-39.

<sup>180</sup> V. 143.

<sup>181</sup> V. 142-43, 152.

3. She expected leniency for her sister, felt the officer overreacted, and her sister attributed it to race;
4. She and her family did volunteer work with inmates, offering them encouragement; and
5. She felt that people were wrongfully charged, and that juries had a role in wrongful convictions.<sup>182</sup>

A family member's involvement with the legal system is a legitimate race-neutral reason for the state to exercise a peremptory challenge. *See State v. Martin*, 614 N.W.2d 214, 222 (Minn. 2000).

After the prosecutor has offered a race neutral explanation for the exercise of peremptory challenges, it falls to the trial court to determine whether the defendant has met his burden to prove purposeful discrimination on the part of the prosecutor. *Batson v. Kentucky*, 476 U.S. 79, 96-97 (1986).<sup>183</sup> After the court listened to the prosecutor's reasons for the peremptory strike, it concluded that his reasons were race-neutral.<sup>184</sup> Specifically, the court found that the prosecutor struck the potential juror because she expressed opinions that led the prosecutor to believe she was sympathetic to individuals accused of or convicted of crimes.<sup>185</sup>

Taking its analysis to the third step, the court concluded that the defense failed to prove purposeful racial discrimination.<sup>186</sup> As the court explained, "[B]ased on what I've

---

<sup>182</sup> V. 144-47.

<sup>183</sup> This three-step *Batson* analysis has been incorporated into Minnesota's Rules of Criminal Procedure. *See* Minn. R. Crim. P. 26.02, subd. 6a(3).

<sup>184</sup> V. 148.

<sup>185</sup> V. 153.

<sup>186</sup> V. 154.

observed here, I don't see anything in the demeanor or the questioning of the prosecutor that leads me to believe that the prosecutor was trying to single out prospective jurors based on their race.”<sup>187</sup> The court viewed the prosecutor's questions as “directed towards learning that prospective juror's views, her philosophies . . . and her views on the system and how it works.”<sup>188</sup>

The court also noted that the prosecutor was interested in excluding individuals from the jury panel who held racist views, and he supported challenges-for-cause of such individuals.<sup>189</sup> In the prosecutor's words, “If [a prospective juror] doesn't want to . . . give their fair time because this happens to involve African-Americans rather than some other race, [he or she] is not going to be the juror we want for either side . . .”<sup>190</sup>

It is also significant that the jury ultimately included a member of another racial minority, a Native American.<sup>191</sup> The prosecutor did not strike this venireperson, despite his involvement, as a young man, with criminal charges and convictions.

Because the district court is in a unique position to determine whether the circumstances of a peremptory challenge give rise to an inference of discrimination, the reviewing court will reverse a district court's decision only if there was clear error. *State v. White*, 684 N.W.2d 500, 506-07 (Minn. 2004). The trial court is afforded this deference because the factual determination of discrimination will typically turn largely

---

<sup>187</sup> V. 154.

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> V. 64-65

<sup>191</sup> *See* voir dire questionnaire, juror #160, V. 483.

on the trial court's assessment of the credibility. *State v. DeVerney*, 592 N.W.2d 837, 844 (Minn. 1999). The trial court properly concluded that the prosecutor's peremptory challenge was not race-based and was made for legitimate, nondiscriminatory reasons.

**II. The defendant's right to confrontation was not violated when the court prohibited him from cross-examining a witness regarding the exact number of months his sentence was potentially reduced under the terms of his plea agreement.**

The defendant next argues that his constitutional right of confrontation was violated when the trial court prohibited him from cross-examining Myshohn King regarding the exact number of years or months his sentence was potentially reduced in accordance with his plea agreement. His argument is without merit and should be rejected.

King, an eyewitness to the crime, was originally charged as an accomplice. Pursuant to a plea agreement, King pled guilty to aiding an offender as an accomplice-after-the fact.<sup>192</sup> The terms of his plea agreement included a sentence of no more than 120 months in exchange for truthful testimony during the plea hearing and at the defendant's trial.<sup>193</sup>

The prosecutor made a motion in limine to prohibit the defendant from referring to the exact number of months King's potential prison term was being reduced in exchange for his truthful testimony. The trial court ruled that while the defense could not inquire about the exact number of months King's potential sentence was reduced, it could cross-

---

<sup>192</sup> T. 514, 517

<sup>193</sup> T. 11, 17.

examine King about all other aspects of the plea agreement, including the fact that he received a 75% reduction in potential sentence length if he complied with the terms of his plea agreement.<sup>194</sup>

The trial court's ruling was not error. Explaining the limitations on cross-examination, the United States Supreme Court said, "The Confrontation Clause guarantees only 'an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *Kentucky v. Stincer*, 482 U.S. 730, 739 (1987) (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985)).

In accordance with that principle, this court ruled that it is not error to deny defense counsel the right to cross-examine an accomplice regarding the specific number of months his sentence could be reduced pursuant to a plea agreement. *State v. Greenleaf*, 591 N.W. 2d 488, 501-02 (Minn. 1999). In *Greenleaf*, this court ruled that it was appropriate for a trial court to be concerned that a recitation of the number of months imprisonment the witness could serve might mislead the jury regarding the number of months another defendant, if convicted might be in custody. *State v. Greenleaf*, 591 N.W. 2d 488, 501-02 (Minn. 1999); see also *State v. DeVerney*, 592 N.W.2d 837 (Minn. 1999) (upholding a similar limitation, because it did not prevent the defendant from discrediting the witness's testimony as biased). The defendant's right to confrontation was not violated.

---

<sup>194</sup> T. 542-45.

**III. The trial court did not err by failing to give a jury instruction about accomplice testimony regarding the defendant's girlfriend, Convona Sims, where Convona was not an accomplice, the defendant did not request such an instruction, and the omission of this instruction did not have a significant impact on the verdict.**

On appeal, the defendant argues for the first time that Convona was an accomplice, and that the trial court erred by not instructing the jury about the limitations of accomplice testimony with regard to Convona. His argument is totally without merit and should be rejected.

The decision to give a requested jury instruction lies in the discretion of the trial court and will not be reversed absent an abuse of that discretion. *See State v. Daniels*, 361 N.W.2d 819, 831 (Minn. 1985). A reviewing court should evaluate the erroneous omission of a jury instruction under a harmless-error analysis. *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004) (*citing State v. Shoop*, 441 N.W.2d 475, 480-01 (Minn. 1989)). If the erroneous omission of the instruction “might have prompted the jury, which is presumed to be reasonable, to reach a harsher verdict than it might have otherwise reached, the defendant must be awarded a new trial.” *Id.*

If no objection is made, the reviewing court will reverse only if the instruction constitutes plain error. *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). In the instant case, an accomplice instruction with regard to Convona was not requested, was not supported by the evidence, and it was not plain error that it was not given.

A person is criminally liable for a crime committed by another if the person “intentionally aids, advised, hires, counsels, or conspires with or otherwise procures the

other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2004). When imposing liability for aiding and abetting, courts distinguish between playing “a knowing role in the crime” and having a “mere presence at the scene, inaction, knowledge and passive acquiescence.” *State v. Palubicki*, 700 N.W.2d 476, 487 (Minn. 2005).

By statute, a person cannot be convicted upon the testimony of an accomplice, unless the testimony “is corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.” Minn. Stat. § 634.04 (2004).

A conviction cannot rest on uncorroborated testimony from an accomplice because the accomplice’s credibility is inherently untrustworthy. *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002). It is untrustworthy because the accomplice “may testify against another in the hope of or upon a promise of immunity or clemency or to satisfy other self-serving or malicious motives.” *State v. Shoop*, 441 N.W.2d 475, 479 (Minn. 1989).

There was no evidence to suggest that Convona was an accomplice. She played no role whatsoever in the commission of this crime. She was never charged with a crime in connection with Q [REDACTED] L [REDACTED]’s death and was not testifying under the terms of a plea agreement.

Moreover, Convona did not testify out of self-serving or malicious motives. In fact, she actively avoided testifying against the defendant. Convona was perhaps one of the most recalcitrant witnesses on record. The state subpoenaed her to appear as a

witness, and a warrant was issued when she failed to appear.<sup>195</sup> When the police came to her house with the warrant, they found her hiding in the clothes dryer.<sup>196</sup>

As she started to testify, Convona told the prosecutor she did not want to talk and asked if she could “plead the [F]ifth.”<sup>197</sup> The prosecutor told the court that there was no basis for that, but the court nonetheless appointed a lawyer to represent her.<sup>198</sup> The court explained that Convona may need counsel, because she could be found in contempt of court for failing to testify if the court compels her to testify.<sup>199</sup>

According to the defendant, by appointing counsel for Convona, it demonstrated that the court believed Convona had some complicity in the crime, and the court should have given the accomplice-testimony instruction.<sup>200</sup> That is not a reasonable interpretation of the court’s actions. Counsel was appointed not because Convona was an accomplice, but because she could be held in contempt for failing to testify at trial as she had threatened to do.

After consulting with counsel, Convona agreed to testify, but only if she were granted transactional immunity.<sup>201</sup> The prosecutor agreed to the granting of immunity, and the court signed an order compelling her testimony and granting immunity.<sup>202</sup>

---

<sup>195</sup> T. 1110.

<sup>196</sup> T. 1149-50.

<sup>197</sup> T. 1106.

<sup>198</sup> T. 1107-09.

<sup>199</sup> T. 1110.

<sup>200</sup> A.B. 38-39 “A.B.” refers to Appellant’s Brief.

<sup>201</sup> T. 1117, 1134.

<sup>202</sup> T. 1135

There was absolutely no evidence that Convona was an accomplice. Although the defendant asserts that Convona “helped lure” the victim to the house, there is nothing in the record to support that, and the defendant does not offer any citations to the record to support that assertion.<sup>203</sup>

While she was present at the house where the homicide occurred, she was not in the room where it happened. Although she overheard Dobbins telling Coleman to “bring it,” meaning the gun, she played no role in having the gun brought to the house.

And finally, while she had a feeling something was “going to get done in the house,” there was nothing to suggest she played any role in the homicide. Given that Convona knew the defendant was a drug dealer, that the victim owed him money, that there was a dispute about the money and that there was a lot of unusual activity happening around her, it was easy to understand how Convona had a feeling something was going to happen. Sensing trouble does not make a person an accomplice to homicide.

The court had no obligation to instruct the jury on accomplice testimony with regard to Convona because she was not an accomplice. It was not error, plain or otherwise, to fail to give the instruction. The nonexistent error did not affect substantial rights or have a significant impact on the verdict.

---

<sup>203</sup> A.B. 37.

**IV. When considered in light of the whole trial, the defendant was not denied his right to a fair trial by the prosecutor's cross-examination of the defendant or by one sentence in the state's closing argument that used the subjective "I."**

The defendant claims that his conviction should be overturned because the prosecutor engaged in misconduct when cross-examining him and in the closing argument. His claim is without merit.

The decision to grant a new trial because of prosecutorial misconduct rests within the district court's discretion, and the judgment will be reversed only where the misconduct, in light of the entire record, appears to be so inexcusable and prejudicial that the defendant's right to a fair trial was denied. *State v. Pilot*, 595 N.W.2d 511, 519-20 (Minn. 1999).

When claims of prosecutorial misconduct are reviewed, appellate courts will reverse only if the misconduct, when considered in light of the whole trial, impaired the defendant's right to a fair trial. *See State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003). If the state has engaged in misconduct, the defendant will not be granted a new trial if the misconduct is "harmless beyond a reasonable doubt." *Ture v. State*, 681 N.W.2d 9, 19 (Minn. 2004). An error is harmless beyond a reasonable doubt only if the verdict rendered was "surely unattributable to the error." *State v. DeRosier*, 695 N.W.2d 97, 106 (Minn. 2005). A review of the entire trial record shows that the defendant received a fair trial and that the misconduct was harmless beyond a reasonable doubt.

First, the defendant complains that the prosecutor asked him questions on cross-examination that focused on his opportunity to sit through the trial, hear the evidence and

review all of the reports. It is improper for a prosecutor to ask that type of question. *See State v. Buggs*, 581 N.W.2d 329, 341 (Minn. 1998).

The state acknowledges that the prosecutor asked the defendant a limited number of questions of that sort on cross-examination. During his closing argument, however, the prosecutor made no reference to the defendant concocting a story after he sat through the trial and listened to the evidence. Such comments made during cross-examination are less troubling than when they are made during closing argument. *Id.* Constitutional issues raised by such remarks are “not present or are of less concern when made upon cross-examination,” than during closing argument, because if the remarks are made during cross-examination, defense counsel has the opportunity to rehabilitate the defendant’s credibility. *Id.*; *Agard v. Portuondo*, 117 F.3d 696, 708 (2d Cir. 1997).

Next, the defendant argues that it was misconduct for the prosecutor to question the defendant about his pretrial silence and his right to counsel. The prosecutor asked a handful of questions on cross-examination about why the defendant did not tell the police about King being the shooter or about ironing the Harlem Globetrotters outfit during the shooting.

The state may not refer to or elicit testimony about a defendant’s post-arrest silence. *State v. McCullum*, 289 N.W.2d 89, 92 (Minn. 1979). It is not improper, however, to cross-examine a defendant about what he didn’t say to police *before* asking for counsel.

The prosecutor's limited questions were focused on the timeframe before the defendant asked for counsel, and he tried to focus the defendant on that period. The prosecutor's questions were not designed to elicit testimony about his post-arrest or pretrial silence.

Next, the defendant argues that the prosecutor committed misconduct by asking the defendant "are they lying?" questions during cross-examination. In this case, there was testimony from the defendant's girlfriend, friends and acquaintances. It was obviously difficult for them to testify against the defendant, but they did the best they could under the circumstances.

As a general rule, "were they lying" questions are inappropriate. *State v. Pilot*, 595 N.W.2d 511, 518 (Minn. 1999). At the same time, an inflexible rule prohibiting such questions is not necessary or desirable. *Id.*

In this case, four of the state's lay witnesses – King, Convona, Thaijuana and Shiniqua – gave testimony that was totally at odds with the defendant's testimony, while being consistent with each other's testimony and the physical evidence. Although the prosecutor did not ask, "Are they lying?" he asked the defendant similar questions. The questions were not plentiful, and they did not dwell on the subject. In light of the fact that there were many lay witnesses whose testimony was consistent, while completely at odds with the defendant's obviously incredible story, it was not totally out of line to ask whether all of these witnesses could be wrong about their testimony.

Finally, the defendant argues that the prosecutor committed misconduct when he asked the defendant a short series of questions that included, “In the world you live in, Mr. Dobbins, people shouldn’t tell about things they saw; correct?” According to the defendant, it impermissibly interjected race – specifically, “lower-class and working class African-Americans” – into the argument.<sup>204</sup>

The prosecutor’s questioning was not about race, directly, indirectly or any other way. It was about the defendant’s drug dealer’s world and its code of silence. It was the defendant who testify at length about dealing drugs. Drug dealing is not the domain of African Americans. State and federal prisons are filled with Caucasian drug dealers. The defendant’s declaration that this question was about race is unfair to the state in general and this prosecutor in particular.

The questions were asked to determine why, if the defendant were so shocked and surprised by the homicide he witnessed, he didn’t report it to the authorities. Although the questions may have been improper as not helpful to the jury in determining guilt or innocence, they did not interject race into the questioning.

The defendant argues that this court’s opinion in *State v. Cabrera* supports his argument. 700 N.W.2d 469 (Minn. 2005). This case is distinguishable from *Cabrera*. Unlike *Cabrera*, the prosecutor did not mention the defendant’s race, directly or indirectly in his questions or during closing argument. He did not attribute racist views

---

<sup>204</sup> A.B. 47.

or attitudes to the defendant's attorneys, nor did he in any way interject race into a trial that had nothing to do with the defendant's race.

Finally, the defendant found two sentences in the prosecutor's closing argument to challenge on appeal. Those sentences are ". . . I would know the difference and I would be honest when I testify. Desperation and self-preservation can lead to some pretty fanciful tales."<sup>205</sup> Those sentences were embedded in a lengthy discussion about the defendant's lack of honesty and credibility.

A prosecutor's use of phrases such as "I suggest to you" and "I think" to interject personal opinion into a closing argument is improper. *See Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004). Prosecutors must not interject their personal opinions into a case. This is so in order to prevent "exploitation of the influence of the prosecutor's office." *State v. Everett*, 472 N.W.2d 864, 870 (Minn. 1991) (citing ABA Standards Relating to the Prosecutor's Function, 3-5.8(b) and Commentary (1979)).

By using the subjective "I" once in a lengthy closing argument, the prosecutor erred, but the error was not serious. *See State v. Blanche*, 696 N.W.2d 351 (Minn. 2005) (not plain error for prosecutor to make 18 "I" statements during closing argument).

Moreover, this remark and a substantial portion of the cross-examination that is being challenged on appeal was not objected to at trial. If a defendant fails to object at trial to alleged prosecutorial misconduct or request curative instructions, the plain-error analysis applies. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under the

---

<sup>205</sup> T. 1501

plain error standard, a defendant may obtain relief by demonstrating that: (1) there was error, (2) that is plain, and (3) the error affected the defendant's substantial rights. *Id.* In order to satisfy the third prong, the defendant must show that the error was prejudicial and that it affected the outcome of the case. *Id.* at 741.

While the first two prongs of the plain-error test were satisfied, the third was not. The error was not prejudicial and did not affect the outcome of the trial.

The verdict was surely unattributable to the error. The evidence against the defendant was overwhelming. It included:

1. Eyewitness testimony that the defendant was the shooter;
2. The defendant admitted at trial that the victim owed him money for drugs, that he brought the victim to his home so that he could make arrangements to repay the money, that he invited Coleman to come over, that Coleman arrived with a gun and wearing gloves, that the defendant carried the body to the bathtub and the shed, and that he removed his clothing from the house, intending to burn it;
3. Convona and King heard the defendant and the victim talking or arguing about money.
4. Convona heard the defendant say, "Bring it" during a cell phone conversation, referring to a gun.
5. Shortly after that phone conversation, Coleman came to the house with a gun.
6. The defendant told King and Thaijuana that he "shot'em."
7. The defendant told Thaijuana that he turned up the volume on the music and then shot. The police found the volume control turned high on the radio;

8. Thaijuana and Shiniqua saw the defendant cleaning up blood and carrying the body to the shed, wrapped in an air mattress;
9. Blood found on the defendant's clothing matched the victim's DNA profile;
10. The shoes worn by the defendant at the time of his arrest could not be ruled out as the source of the bloody footprints found on the air mattress and in the snow between the defendant's house and the garden shed where the body was found;
11. Latent prints found on the bathroom sink at the crime scene and on the Kingsford charcoal lighter can matched the defendant's known prints;
12. There was gunshot residue found on the defendant's clothing and hands;
13. The defendant's explanation that he was ironing his Harlem Globetrotter's outfit in a back bedroom when the shooting occurred was completely contrary to the evidence.

While the prosecutor asked a handful of improper questions during the defendant's 64-page cross-examination and used one "I" sentence during his closing argument, it was not misconduct that was so inexcusable or prejudicial that a new trial is warranted, particularly in light of the entire trial and the overwhelming evidence of the defendant's guilt.

**CONCLUSION**

For all the reasons stated herein, Respondent respectfully requests that the decision of the lower court be affirmed.

Respectfully submitted,

MIKE HATCH  
Minnesota Attorney General  
1800 NCL Tower  
445 Minnesota Street  
St. Paul, Minnesota 55101-2134

ROBERT M.A. JOHNSON  
Anoka County Attorney

Dated: October 19<sup>th</sup>, 2005

  
BY: MARCY S. CRAIN  
Assistant Anoka County Attorney  
License No. 134326  
Anoka County Government Center  
2100 Third Avenue, 7<sup>th</sup> Floor  
Anoka, Minnesota 55303  
(763) 323-5672

Attorneys for Respondent