

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-1737**

State of Minnesota,  
Respondent,

vs.

Clinton Roosevelt Delaney,  
Appellant.

**Filed December 19, 2022  
Affirmed  
Jesson, Judge**

Ramsey County District Court  
File No. 62-CR-20-3827

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)

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Considered and decided by Connolly, Presiding Judge; Johnson, Judge; and  
Jesson, Judge.

**NONPRECEDENTIAL OPINION**

**JESSON**, Judge

After appellant Clinton Roosevelt Delaney was placed at the scene of his pregnant girlfriend's murder by his own cellphone-location data, he was convicted of second-degree murder. Delaney now appeals his conviction on two grounds: (1) his cellphone data was

admitted without proper foundation, and (2) the prosecution's remarks in its opening statement and closing argument constituted prosecutorial misconduct. Since the cellphone data was only one piece of evidence in a strong case against Delaney and any misconduct by the prosecution was harmless, we affirm.

## FACTS

Respondent State of Minnesota charged Delaney with one count of felony second-degree intentional murder<sup>1</sup> based on the allegation that on June 3, 2020, Delaney shot and killed his girlfriend, A.J., who was pregnant with his child.<sup>2</sup>

Delaney's 11-day jury trial began in July 2021. When the district court swore in the jury and provided its preliminary jury instructions, the court stated:

The fact that the defendant has been brought before this court by the ordinary processes of the law and is on trial should not be considered by you as in any way suggesting his guilt. The defendant is presumed innocent of the charge made. This presumption remains with the defendant unless and until the defendant has been proven guilty beyond a reasonable doubt. The burden of proving guilt is on the state.

The parties then gave their opening statements. The prosecution started their opening with: "[A.J.] was murdered. [A.J.] was murdered. You will know who did it from the very beginning. It was this defendant, Clinton Delaney." Delaney objected to this statement because "[i]t stripped away the presumption of innocence." The district court

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<sup>1</sup> In violation of Minnesota Statutes section 609.19, subdivision 1 (2018).

<sup>2</sup> The medical examiner confirmed that A.J. was 26 to 27 days pregnant, and there was a high probability that it was Delaney's child.

offered to give a curative instruction for Delaney at his discretion. But, Delaney did not propose a curative instruction.

The following facts are a summary of the evidence established at trial. On June 2, 2020, A.J. sent a Facebook message to Delaney's fiancée (the fiancée) telling her that she was pregnant with Delaney's child. The fiancée testified that she wanted proof of the pregnancy and drove from her home in St. Cloud to St. Paul with a pregnancy test for A.J. to take. The pregnancy test was positive. In response, after the fiancée drove back to her home in St. Cloud, she messaged A.J. that Delaney would never be there for her or her child.

Later that night, A.J. went to her friend's house and told her friend, who testified at trial, that she was upset because Delaney had given her a sexually transmitted disease and the fiancée had told her that he would not be in their child's life. A.J.'s friend testified that A.J. had a knife with her and had told her that she was going to "slash a tire." A.J. then borrowed her friend's car to drive over to a St. Paul residence (referred to as Pops's house), where she believed Delaney was staying, to give Delaney money she owed him.

When she arrived, A.J. texted Delaney that she would not drop off the money unless he was alone. Delaney texted back that he was with Drake and Bertha, which were the names he had given to his guns. Delaney explained in an interview with the investigating sergeant<sup>3</sup> that he was inside Pops's house looking out the window when he saw A.J. arrive in her friend's car. A.J. did not get out of the car or put the money in the mailbox like they

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<sup>3</sup> The sergeant testified at trial as to what Delaney said to him in their interview conducted about one week after A.J.'s murder.

had agreed. Instead, Delaney claimed that A.J. “just left.” The last texts between Delaney and A.J. about the exchange of money were sent and received at 2:49 a.m. The first 911 call came in at 2:51 a.m. The 911-caller said she heard an initial gunshot, a scream, four to five more gunshots, and then the screeching of tires before she called 911.

When the police arrived, they found A.J. dead in the driver’s seat of her friend’s car with a knife in the passenger seat about a block and a half from Pops’s house. A.J. died from multiple gunshot wounds. The police found Delaney’s blue Chevrolet Monte Carlo parked on the street with multiple bullet holes in the hood and one slashed tire.<sup>4</sup> Shell casings were found at the scene from 9mm and .40 caliber guns. Multiple witnesses had seen Delaney with a silver-and-black-9mm handgun on prior occasions.

In addition to the witness testimony and text messages which established the outline of events described above leading up to A.J.’s death, two witnesses testified: an occupant at Pops’s house and an FBI Special Agent (the agent).

The occupant testified that she awoke the morning of A.J.’s murder to a conversation between Delaney and Pops (the owner of the house) and overheard Delaney say that “he messed up and he killed [A.J.] and he shot her.” A witness told the police that Delaney had said to Pops that “[A.J.] is fucking up my relationship with [my fiancée].”

The agent testified regarding Delaney’s cellphone data from T-Mobile. Delaney objected to the admission of the cellphone data for lack of foundation because the state was

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<sup>4</sup> The fiancée testified that when she dropped Delaney off at Pops’s house the day before A.J.’s murder, near the blue Chevrolet Monte Carlo, there were no bullet holes in the hood and none of the tires were slashed.

not planning to call T-Mobile's custodian of records and for being hearsay. The district court ultimately ruled that the evidence could be admitted because it was self-authenticating, after the state provided a notarized affidavit from T-Mobile's custodian of records identifying the data as business records. Accordingly, the district court determined that the data had foundation from the certificate of acknowledgement and was not inadmissible hearsay because it satisfied the business-records exception.

The agent, who is part of the Cyber Analysis Survey Team, testified that the cellphone data, specifically cellphone-site-location information, is usually stored by cellphone companies for billing purposes and is primarily machine-generated, because the data is gathered from a turned-on cellphone connecting to networks. This data is then provided in the form of Excel spreadsheets from T-Mobile and can be put into software to create cellphone-site maps. The agent explained further that the cellphone company takes data from when someone makes a call, generates a record of what tower was used, and then this information can be used to map the location of that tower and identify the general area of where that device was located when that call was made. With this information, the agent testified that Delaney's cellphone usage placed his cellphone "towards the geographic area of [Pops's house]" at the time of A.J.'s murder.

Before closing arguments, the district court gave the following instruction to the jury:

The defendant is presumed innocent of the charges made. This presumption remains with the defendant unless the defendant has been proven guilty beyond a reasonable doubt. That the defendant has been brought before the court by the ordinary processes of the law and is on trial should not be considered by you in any way suggesting guilt. The burden of proving guilt is on the state. The defendant does not have to prove his

innocence.

The prosecution began their closing argument with: “Like my colleague . . . said at the start, from the beginning of this case you’ve known who killed [A.J.], Clinton Delaney.” Delaney objected to the statement and the district court immediately instructed the jury: “Members of the jury, I’ll remind you that you are the sole judges of determining whether the evidence has proven this case beyond a reasonable doubt.”

The jury found Delaney guilty of felony second-degree intentional murder. The jury also found the presence of aggravating factors: A.J. was pregnant, A.J. was particularly vulnerable, the offense was committed with particular cruelty, and the offense was more serious than a typical case. The district court granted the state’s request for an upward-durational departure based on those factors and sentenced Delaney to 480 months’ imprisonment.

Delaney appeals.

## DECISION

Delaney asserts that there were two errors made by the district court at trial: the district court improperly admitted his cellphone data from T-Mobile with the agent as the testifying witness because there was a lack of foundation,<sup>5</sup> and the prosecution’s statements

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<sup>5</sup> The state argues that Delaney forfeited his right to bring this issue on appeal because Delaney did not provide the district court a timely chance to address the issue of foundation in relation to the business-records exception for the cellphone data. But Delaney objected to the admission of the cellphone data on both foundation and hearsay grounds in the district court. Accordingly, this issue was not forfeited. *See State v. McCauley*, 820 N.W.2d 577, 583 (Minn. App. 2012), *rev. denied* (Minn. Oct. 24, 2012) (“The law is well-settled that this court does not generally consider issues not argued to and considered by the district court, especially where they assert constitutional violations.”).

during opening and closing were misconduct that impacted the verdict. We address each assertion in turn.

**I. Any error by the district court in admitting Delaney’s cellphone data was harmless.**

The district court reasoned that the cellphone data was properly admitted because it was (1) self-authenticating, given the affidavit signed by T-Mobile’s custodian of records; and (2) met the business-records exception to hearsay.

On appeal, we are mindful that “[e]videntiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). But we do not need to decide whether the district court erred in admitting the cellphone data for lack of foundation because any error in its admission was harmless. *See State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019) (holding an error is harmless when there is no reasonable possibility that it substantially influenced the jury’s decision).

The district court’s admission of the cellphone data did not significantly affect the jury’s decision for three reasons: the evidence of Delaney’s guilt was strong, the cellphone evidence was not highly persuasive given its presentation by the agent, and Delaney had an opportunity to counter the evidence. *State v. Hall*, 764 N.W.2d 837, 842 (Minn. 2009) (explaining when deciding what effect the admitted evidence had on the verdict, we

consider the strength of the evidence of guilt, how the evidence was presented and whether it was highly persuasive, if the evidence was used in closing argument, and the defense's ability to effectively counter it).

Here, the evidence of Delaney's guilt, outside of the cellphone data, is strong. *Id.* at 842-43. Specifically, there are five main pieces of evidence that would allow the jury to establish Delaney's guilt without the consideration of his cellphone data. One, Delaney placed himself at the scene of A.J.'s murder when he said he was looking out a window at Pops's house when he saw A.J. in her friend's car shortly before her death during his interview with the sergeant. Two, Delaney sent a text message to A.J. that placed him at the scene of the murder two minutes before the 911 call was placed reporting the sound of gunshots near Pops's house. Three, a witness overheard Delaney admit to killing A.J. Four, Delaney texted A.J. that he had his two guns with him, and other witnesses confirmed Delaney owned a 9mm handgun that matched the caliber of some casings found at the scene of A.J.'s murder. And five, Delaney had motive to kill A.J. because A.J.'s pregnancy was interfering with his relationship with his fiancée, which was supported by witness testimony and reiterated in Delaney's interview with the sergeant.

Second, the cellphone data was not a highly persuasive piece of evidence, given how the agent presented the findings, because it only gave a general area of where Delaney was located at the time of the murder. *Id.* at 842. The agent did not say that the data placed Delaney directly where A.J. died at the time of the murder, but gave a vague statement that



Delaney was likely around that area.<sup>6</sup> And this information was corroborated by the testimony from two witnesses, with Delaney admitting in his interview with the sergeant that he was at Pops's house and the other witness testifying Delaney admitted to committing the murder and being at the murder scene.

Third, Delaney had a chance to effectively counter the cellphone data and its reliability through cross-examination of the agent. *Id.* Delaney was able to question the reliability of the cellphone data by getting the agent to admit that the data "pings" are estimates and that they only tell where Delaney's cellphone was, not where Delaney himself was at the time of A.J.'s murder. And although the prosecution used the agent's testimony regarding the cellphone data in their closing, this factor alone is not dispositive. *See generally Hall*, 764 N.W.2d 837; *see generally Townsend v. State*, 646 N.W.2d 218 (Minn. 2002).

In sum, even if the district court erred by admitting the cellphone data without proper foundation, such error was harmless because it did not significantly impact the jury's verdict given the strength of the evidence against Delaney.

## **II. The prosecution's statements during its opening and closing at trial did not prejudice Delaney or impact the verdict.**

Delaney argues that two proclamations by the prosecution, one in opening statement and one in closing argument, constituted prosecutorial misconduct that impacted his

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<sup>6</sup> Specifically, the agent testified that the cellphone data was "consistent with [Delaney's cellphone] being in the geographic area of [Pops's house]."

constitutional right to a fair trial because they misstated the presumption of innocence. Delaney objected to both statements at trial.<sup>7</sup>

Assuming the prosecution's remarks constituted misconduct, Delaney would not be entitled to a new trial because there is no reasonable possibility that these two isolated statements made any difference in the jury's verdict. We apply two harmless-error standards of review for objected-to prosecutorial misconduct. *State v. Nissalke*, 801 N.W.2d 82, 105-06 (Minn. 2011). For less serious prosecutorial misconduct, we determine "whether the misconduct likely played a substantial part in influencing the jury to convict." *Id.* at 105 (quotation omitted). When reviewing serious misconduct, we consider "whether the alleged misconduct was harmless beyond a reasonable doubt." *Id.* (quotation omitted). We conclude harmless error has occurred beyond a reasonable doubt only if the verdict rendered was surely unattributable to the error. *Id.* at 105-06 (quoting *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008)).

The two statements by the prosecution that are at issue are:

- 1) In opening, the prosecution said: "[A.J.] was murdered. [A.J.] was murdered. You will know who did it from the very beginning. It was the defendant, Clinton Delaney."
- 2) In closing, the prosecution said: "Like my colleague [. . .] said at the start, from the beginning of this case you've known who killed [A.J.], Clinton Delaney."

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<sup>7</sup> Delaney objected after the prosecution's opening statement and during closing argument. The district court offered a curative instruction after the opening statement, and immediately provided a curative instruction during the prosecution's closing argument.

Applying the less-serious-prosecutorial-misconduct standard,<sup>8</sup> the two statements did not play a substantial part in influencing the jury to convict for two reasons: the district court's instructions to the jury mitigated any prejudice to Delaney and the statements were not influential given the context of Delaney's whole trial. *See State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000) (holding we will only reverse a district court when the prosecution's misconduct, considered in the context of the trial as a whole, was so serious and prejudicial that the defendant's constitutional right to a fair trial was impaired); *see also State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (stating that proper instructions to the jury can mitigate any prejudice or harm that may have occurred from the prosecution's misconduct).

Turning to the circumstances here, the two statements were effectively mitigated by three instructions by the district court that reiterated the presumption of innocence and burden of proof, with one even interjected in the middle of the prosecution's closing argument. As a result, any prejudice to Delaney or impact on the jury's understanding of the presumption of innocence was minimal or nonexistent. *See State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009) (holding that we assume that the jury followed the district court's instructions and properly considered the evidence); *see also State v. Trimble*, 371 N.W.2d 921, 926-27 (Minn. App. 1985), *rev. denied* (Minn. Oct. 11, 1985) (stating that the prosecution's improper remarks on the presumption of innocence did not require reversal because the district court fully instructed the jury on the

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<sup>8</sup> Even if we applied the more-serious-prosecutorial-misconduct standard, the prosecution's statements would be harmless error beyond a reasonable doubt.

presumption of innocence and the defense was able to make a counter argument, so the defense could not show prejudice).

In addition to the district court’s instructions on the topic, the context of the whole 11-day jury trial—where witnesses placed Delaney at the scene of the murder with access to a potential weapon and motive to kill A.J.—convince us that the two statements by the prosecution did not impact the jury’s verdict. *See State v. Swanson*, 707 N.W.2d 645, 658 (Minn. 2006) (any prosecutorial misconduct was harmless error in light of the whole trial’s 1,200-page record and strong evidence of guilt). And, the prosecution explained the purpose of their statements were not to impact the jury’s understanding of the presumption of innocence.<sup>9</sup>

To persuade us otherwise, Delaney relies upon *Moore v. State*, which held that a prosecutor erred by misstating the presumption of innocence in closing argument. 945 N.W.2d 421, 434 (Minn. App. 2020), *rev. denied* (Minn. Aug. 11, 2020). But *Moore* is distinguishable. In *Moore*, the prosecution told the jury that when they begin deliberations, the defendant is no longer entitled to the presumption of innocence. *Id.* at 433.<sup>10</sup> This statement is far more troublesome—blatantly misstating the presumption of innocence—than the prosecution’s statements here, where the prosecution said that the jury

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<sup>9</sup> The state explained after their opening statement that the objected-to sentence was in reference to the fact that the first witness was going to tell the jury that she overheard Delaney admitting to the crime, so the jury would in essence “know from the very beginning” that Delaney committed the crime through that witness’s testimony.

<sup>10</sup> The prosecution in *Moore* specifically said: “The defendant started this trial the way every criminal defendant starts every trial, with a complete presumption of innocence. But at the end of the State’s case, now that all of the evidence is in, and as you begin deliberations, he’s no longer entitled to that presumption.” *Id.*

would “know” that Delaney committed the murder but does not directly misstate the presumption. And, even given the misconduct in *Moore*, that court did not find that the more troublesome statement affected Moore’s substantial rights. *Id.* at 434.

In sum, Delaney’s right to a fair trial was not impaired by the prosecution’s statements in their opening and closing because the jury’s guilty verdict was surely unattributable to the statements, given the district court’s curative instructions and the context of the whole trial.

Because neither the admission of the cellphone data nor the prosecution’s remarks in their opening statement and closing argument prejudiced Delaney or the verdict, we conclude that the district court did not err, and Delaney’s conviction stands.

**Affirmed.**