STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1398

State of Minnesota,
Respondent,

vs.

Raven Bianca Gant,
Appellant.

Filed June 9, 2014
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR1228860

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

STAUBER, Judge

On appeal from her conviction of second-degree assault and terroristic threats, appellant argues that (1) the district court committed reversible error by admitting the

testimony of a detective regarding the continuum of force, the 21-foot rule, whether a knife is a dangerous weapon, and his observations of what he saw and heard on a cell phone video and (2) the prosecutor committed prejudicial misconduct by improperly shifting the burden of proof during closing arguments. We affirm.

FACTS

Appellant Raven Bianca Gant was charged with second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2012), for allegedly threatening two security guards with a knife. The complaint was later amended to add two counts of terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2012).

At trial, evidence and testimony was presented establishing that security guards Steven Newsome and John Hollerud were working the evening shift at a multi-building complex in Brooklyn Center on August 30, 2012. Due to complaints from residents, management had asked the security guards to be particularly cognizant of cars speeding in the parking areas. In light of the complaints, the security guards noticed a vehicle traveling in the parking lot at "a high rate of speed." Newsome flashed his flashlight at the vehicle several times in an effort to get the driver's attention. When the driver rolled down the window, Newsome told the driver to "slow it down." According to Newsome, the female driver responded by saying something like "stop flashing that damn light," and then drove off.

About an hour or two later, the security guards noticed the same vehicle driving again in the parking lot at a high rate of speed. Newsome again took out his flashlight and flashed it at the car. According to Newsome, the driver said something like "don't be

flashing that damn light." The driver then made a U-turn in the parking area, drove back to where the security guards were standing, and stopped about 15 feet from Newsome and Hollerud.

After stopping in front of the security guards, the driver of the vehicle, later identified as appellant, got out the vehicle and approached Newsome and Hollerud. According to Newsome, appellant appeared to be "agitated" and was "angry" at him for "flashing a flashlight at her car." Newsome testified that a verbal confrontation ensued in which appellant was within a foot of his face and close enough to touch his chest. Newsome claimed that in response to appellant's actions, he stepped back from appellant and told her to back up. Appellant, however, continued to scream and advance toward Newsome. Newsome then pushed appellant away from him and told her to leave.

Appellant's boyfriend, who had been sitting in the car, got out after Newsome pushed appellant. The security guards told appellant and her boyfriend to back up and leave, but the couple continued to confront Hollerud and Newsome. Eventually, Newsome pulled out a can of mace and stated: "[l]eave now or you're going to get maced."

After the group exchanged more unpleasantries, appellant's boyfriend got back into the front passenger seat of the car, and appellant walked around towards the driver's side door. Hollerud and Newsome then walked towards the rear of the car thinking appellant was going to leave. Appellant, however, opened the driver's side door of the car, reached inside, pulled out a knife, and pointed it towards Newsome. According to Newsome, he told appellant to "drop it," and began to pull his gun from the holster.

Newsome claimed that appellant said something to the effect of: "I'm going to get you, I don't care that you have a weapon or have a gun, I'm still going to get you. You just a security guard, you can't do nothing." Appellant, who was about ten feet from Newsome, then began to advance towards him, prompting both security guards to draw their guns and point them at Gant's feet. Appellant then backed up, got into the car, and drove to her apartment building.

Aleshia Lindsey, a resident of the apartment complex, testified that she and her sister witnessed the confrontation. According to Lindsey, she began video-taping the incident on her cell phone after appellant's boyfriend got out of the car. The video, which lasted about two minutes and 27 seconds, was admitted into evidence.

Detective John Ratajczyk of the Brooklyn Center Police Department was assigned to investigate the case. Detective Ratajczyk testified that he obtained a search warrant to search appellant's car. Upon searching the car, Detective Ratajczyk discovered two knives, one of which was located in the driver's side door. Detective Ratajczyk testified that both knives had silver blades, with black handles, and were about nine inches long.

Over defense objection, Detective Ratajczyk testified regarding the continuum of force; the lowest level of force being the presence of a person in uniform, and the level of force then moves from verbal, to physical, to deadly force. According to Detective Ratajczyk, force in response to a threat is "met with the same force plus one." Detective Ratajczyk also testified that he believed a knife is a dangerous weapon, particularly if the knife is within 21 feet of an officer because a distance of 21 feet is the minimum distance an officer with a holstered weapon needs to react to a threat from a knife. Detective

Ratajczyk further testified that he viewed the video of the incident as part of his investigation, and while the video was played, Ratajczyk described what he had seen and heard on the video and how it related to his investigation.

A jury found appellant guilty of the charged offenses. The district court then sentenced appellant to 27 months in prison, but stayed execution of the sentence for three years with conditions including completion of 180 days in a workhouse, individual counseling, and anger management. This appeal followed.

D E C I S I O N

I.

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). On appeal, the appellant bears the burden of establishing that the district court abused its discretion and that the appellant was prejudiced as a result. *Id.* The error is prejudicial if there is a reasonable possibility that the verdict might have been different if the evidence had not been admitted. *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994).

Appellant argues that the district court abused its discretion by allowing Detective Ratajczyk to testify regarding the continuum of force, the 21-foot rule, whether a knife is a dangerous weapon, and his observations of what he saw and heard on the video. Specifically, appellant argues that this testimony was inadmissible under (a) Minn. R. Evid. 702 because Detective Ratajczyk's testimony was "clearly that of an expert," but his training did not qualify him as an expert; (b) Minn. R. Evid. 402 because it was irrelevant; and (c) Minn. R. Evid. 403 because its probative value was substantially

outweighed by the danger for unfair prejudice. Appellant further argues that she is entitled to a new trial because the admission of this testimony was not harmless error.

Even if we were to conclude that the challenged testimony was inadmissible, appellant cannot establish prejudice because there is no reasonable possibility that the verdict would have been different had the challenged testimony not been admitted. *See Post*, 512 N.W.2d at 102. The record reflects that the evidence supporting appellant's guilt was overwhelming. Both security guards testified that appellant retrieved a knife from her car, threatened them with the knife, and also threatened to run them over with her car. Moreover, Lindsey and her sister both testified that they witnessed the event and saw appellant retrieve "something" from her car, which prompted the security guards to pull their guns. Lindsey also testified that she heard the security guards yelling "[y]ou got a knife, put it down, put it down." Lindsey further testified that appellant was "mad" and "more aggressive" and "wasn't defending herself," from any conduct of the security guards. In fact, the record reflects that Lindsey videotaped the incident on her cell phone, and the video was admitted into evidence. Although the video is dark, a confrontation can be deciphered from the video, and the voices that can be heard on the video are consistent with the testimony of the security guards and Lindsey and her sister. Specifically, appellant can be heard on the video telling the security guards that she is going to run them over with her car and later threatening to cut the security guards. The security guards can also be heard saying something about appellant having a knife and telling her to put it down. And photographs of appellant's car that were admitted into

evidence show a knife sitting in the driver's-side door of appellant's car. Therefore, appellant cannot establish that she is entitled to a new trial.

II.

Appellant argues that the prosecutor committed misconduct during rebuttal when she stated: "There is a time for the presumption of innocence to come to an end, and that time is when the evidence is in, and you know what happened that day. That time is now." Appellant objected to this statement and requested a mistrial. The district court denied the motion for a mistrial but provided a curative instruction regarding the presumption of innocence.

We review claims of prosecutorial misconduct that were objected to at trial under a two-tiered harmless-error test. *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009). Cases involving claims of "unusually serious" prosecutorial misconduct are reviewed for "certainty beyond a reasonable doubt that misconduct was harmless," while claims of less serious prosecutorial misconduct are reviewed "to determine whether the misconduct likely played a substantial part in influencing the jury to convict." *Id.* What distinguishes these two types of misconduct remains unclear. *See, e.g.*, *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012) (declining to reach "the issue of the continued applicability of the *Caron* test").

"Misstatements of the burden of proof . . . constitute prosecutorial misconduct." *State v. Fields*, 730 N.W.2d 777, 786 (Minn. 2007). "Prosecutors improperly shift the burden of proof when they imply that a defendant has the burden of proving his innocence." *State v. Martin*, 773 N.W.2d 89, 105 (Minn. 2009). To determine whether

the prosecutor improperly shifted the burden of proof, this court reviews "the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *Carridine*, 812 N.W.2d at 148 (quoting *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993)).

Here, we agree with appellant that the presumption of innocence remained with appellant until the jury determined that her guilt was proven beyond a reasonable doubt. Thus, it was improper for the prosecutor to state otherwise. But we conclude that the misconduct was harmless beyond a reasonable doubt because the verdict rendered was surely unattributable to the error. *See State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (stating that misconduct is harmless beyond a reasonable doubt if the verdict was surely unattributable to the error). As stated above, the evidence against appellant was overwhelming. Moreover, the district court provided a curative instruction emphasizing that appellant is "presumed innocent," and that the presumption of innocence "stays with her unless and until during deliberations you determine that the State has overcome that presumption and proved by competent evidence that she is guilty of one or more of the offenses." Minnesota law "presume[s] that the jury follows the court's instructions." *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005). Therefore, in light of the curative instruction provided by the district court and the overwhelming evidence against appellant establishing guilt, we conclude that prosecutorial misconduct was harmless. *See State v. McDonough*, 631 N.W.2d 373, 389 n.2 (Minn. 2001) ("[A] prosecutor's attempts to shift the burden of proof are often nonprejudicial and harmless where, as here,

the district court clearly and thoroughly instructed the jury regarding the burden of proof.").

Affirmed.