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IN THE
COURT OF APPEALS OF INDIANA

Fredrick David Craft,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 12, 2022

Court of Appeals Case No. 21A-CR-2004

Appeal from the Lake Superior Court

The Honorable Diane Ross Boswell, Judge

Trial Court Cause No. 45G03-2009-MR-39

Weissmann, Judge.

[1] Fredrick Craft objected four times during the State's closing arguments in his jury trial for murder and attempted murder, arguing that the State was relying on facts not in evidence and baselessly attacking his character. The trial court cautioned the State, but the questionable arguments continued. Craft also moved for a mistrial, which the trial court twice denied. But he never asked the trial court to admonish the jury to ignore these arguments.

[2] On appeal, Craft claims that the State's closing arguments constituted prosecutorial misconduct justifying a new trial. The State argues that Craft's failure to request a jury admonishment on top of the motion for mistrial waived the issue. We disagree with the State, finding Craft's prosecutorial misconduct claim preserved. However, we refuse to grant a new trial because the State's closing arguments did not place Craft in grave peril. In addition, the evidence was sufficient to support the verdict. We therefore affirm.

Facts[1]

[3] A jury convicted Craft of murder and attempted murder after a shooting on September 27, 2020. The crime occurred in the empty lot just north of Loft Adiq, an entertainment venue on the 700 block of Broadway in Gary. Around 2:30 a.m., patrons were flowing out of the club to cars parked in the empty lot

[1] We conducted oral argument in this case at Indiana State University in Terre Haute on April 7, 2022. We thank both parties for their able arguments, and we thank Indiana State University, its faculty, and its students for their generous hospitality.

when a burst of rapid gunfire sounded—more than 50 shots in mere seconds. Officers Tyler Knotts and Martin Garza were already on the scene, as police were regularly dispatched to Loft Adiq around last call to control the crowds and deter criminal activity. Figure 1, *infra*, approximates the "chaotic" scene. Tr. Vol. VI, p. 244.

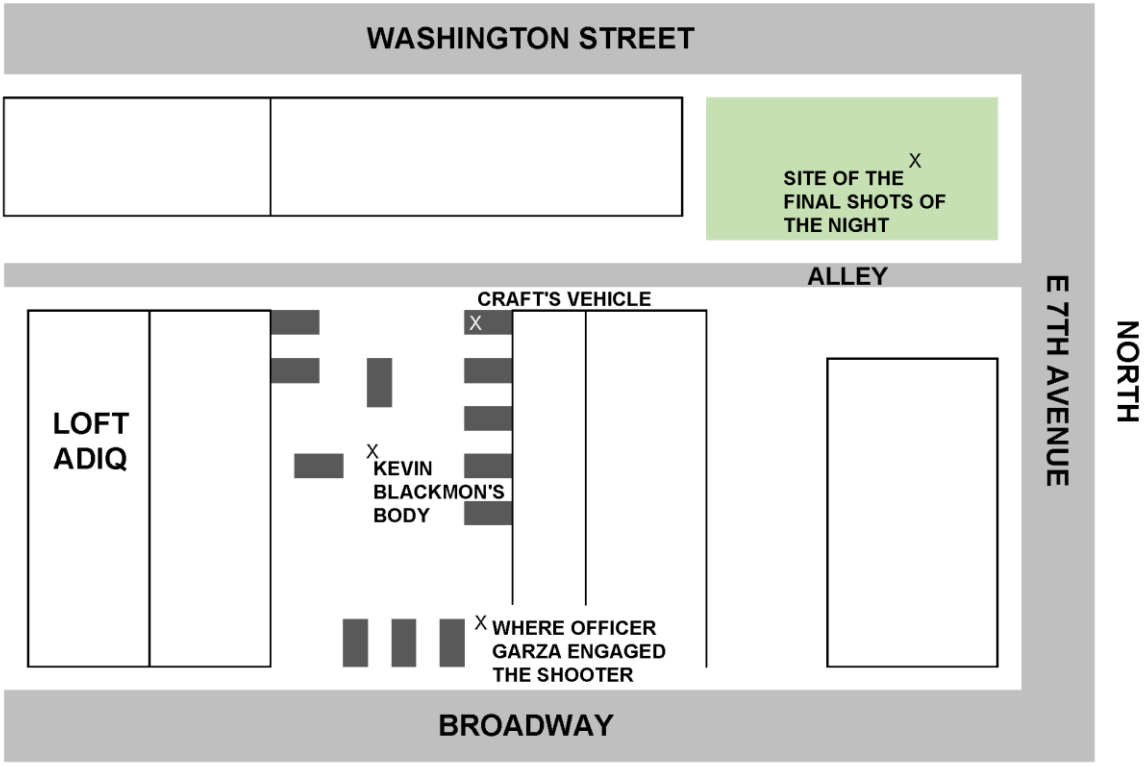

Figure 1[2]

[4] At trial, Officers Knotts and Garza gave somewhat conflicting accounts of what happened. Officer Knotts testified that he ran to the southeast corner of the

[2] This diagram is based on maps and diagrams included in the record, none of which are of sufficient quality to include in this opinion. *See* Exhs. Vol I, pp. 36, 46, 75. This diagram is an approximation of the scene and included only as a visual aid to the reader. *See Altevogt v. Brand*, 963 N.E.2d 1146, 1148 (Ind. Ct. App. 2012) (including, as an aid to the reader, a map that was based on materials in the record).

parking lot when the shots rang out. There, he saw two shooters firing at Officer Garza, but they quickly disappeared. Officer Knotts then saw two men running toward him. One of them, later identified as Craft, was wearing a red and black bulletproof vest bearing the logo for Craft's company, Dads with Glizzys.[3] The other man held something dark in his hand. Officer Knotts told the men to stop, show their hands, and get on the ground. Craft complied and yelled, "Help. I've been shot." Tr. Vol. III, p. 176. The other man ran toward the alley on the west side of the lot. Officer Knotts did not see the men exchange anything. Only seconds had elapsed between Officer Knotts exiting his car and stopping Craft.

[5] Officer Garza soon ran over to Officer Knotts and advised that Craft had just shot someone. While other officers took Craft into custody, Officer Knotts observed Kevin Blackmon—the shooting victim—lying face down in the parking lot. The last shots Officer Knotts heard that night came after Craft was apprehended. These shots were later attributed to two unidentified black men who exchanged gunfire with a third officer at Seventh Avenue and Washington Street.

[6] Unlike Officer Knotts, Officer Garza only saw a single shooter—a black man wearing light-colored pants, a white T-shirt, and a black bulletproof vest—firing a handgun in the southeast corner of the lot and moving toward the middle of the lot. Officer Garza later identified this man as Craft and testified, "He was

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[3] "Glizzy" is slang for Glock, a type of handgun. Tr. Vol. VI, p. 4. Dads with Glizzys sells apparel bearing the company's logo. *Id.* at 5.

firing a semiautomatic handgun, one that looks similar to the one I carry for work." Tr. Vol. VI, p. 203. Officer Garza saw Craft fire at Blackmon, who fell face first to the ground. When Officer Garza yelled for Craft to drop his weapon, Craft turned his fire on Officer Garza instead, backpedaling to hide behind a parked Ford Focus. During this exchange of gunfire, Officer Garza believes he shot Craft. Seconds later, Craft emerged from behind the car, stumbled to the ground and crawled along one of the buildings. Officer Garza ran over to Craft and handcuffed him.

[7] About 20 seconds elapsed from the time Officer Garza first heard shots to when he apprehended Craft. Officer Garza then heard more gunfire to the northwest, in the alley along the lot. He testified that he told Officer Knotts to stay with Craft as he ran toward the shots in the alley. Officer Garza never searched Craft for weapons.

[8] After the gunfire subsided, police collected 111 bullet casings at the scene. They discovered two guns in the alley. They also discovered three guns in Craft's locked Jeep Grand Cherokee, which was parked in the northwest corner of the lot. These included a 9-millimeter Glock handgun with an extended double-barrel magazine (Modified Glock). The firearm examiner testified that 85 of the casings found at the scene were fired by the Modified Glock, which had been converted into an automatic weapon. Two of the bullet fragments recovered from Blackmon's body could be excluded from all the firearms collected at the scene except for the Modified Glock. DNA testing showed multiple people touched the weapons found at the scene, likely including Craft.

[9] Craft was charged with murder for killing Blackmon and attempted murder for shooting at Officer Garza. At trial, Craft objected several times during the State's closing arguments. Four are of note—referenced here as the Trophies Objection, Leader Objection, Courier Objection, and Intimidation Objection.

[10] Craft lodged the Trophies Objection when the State was discussing the DNA evidence. The prosecutor said,

> there were multiple sources of DNA on [the guns collected at the scene]; and I found that interesting in terms of especially guns and ammunition. I mean, these guys were good friends. These guns were their trophies, these Dads with Glizzys passing each other's guns around like prized possessions, trophies. It's no wonder that there were mixed—

Tr. Vol. VII, p. 59. Craft argued that there was no basis in the evidence for this argument, and the trial court instructed the State to limit its argument to the evidence presented to the jury. *Id.* at 60.

[11] Craft lodged the Leader Objection when the State directed the jury to closely examine State's Exhibit 417, a photo taken the night of the shooting. Exhs. Vol III, p. 173. In it, Craft poses with four friends, most of whom are wearing Dads with Glizzys merchandise. Craft stands in the middle of the photo, wearing a black bulletproof vest bearing the Dads with Glizzys logo.

[12] The court told Craft, "It's evidence," and Craft's attorney responded, "Okay. Okay." Tr. Vol. VII, p. 61. The State then continued,

> Mr. Craft is the CEO—I think he's even listed in paperwork as the CEO of Dads with Glizzys, not just in corporate name but in spirit too. He's the leader of Dads with Glizzys. Look at this photograph here. Look how he's the central focus of it, and all his friends are around him. They're going to protect him. He's a fellow Dad with Glizzys, not just a fellow one, he's the leader. In fact, they were riding around in his Jeep that night.

Id. Craft objected again and moved for a mistrial. The trial court told the State:

> I can't let you argue facts that are not in evidence. . . . The picture indicates that they were – you could assume they're friends because they're hanging out together. . . . you can assume they're friends but now to jump from that and say, "He's the CEO[.] They're going to protect him[.] Somebody in this group took that gun . . . and ran it to the car" when you have absolutely no evidence that anybody did that. . . . None of the officers testified that anybody else . . . ran to that car.

Tr. Vol. VII, pp. 61-66. But the court ultimately denied Craft's motion for a mistrial.

[13] Moments later, Craft lodged the Courier Objection when the State argued that one of Craft's friends must have run up to him in the seconds he was hiding behind the Ford Focus to take the murder weapon away from him and put it back in his Jeep. *Id.* at 68. The State argued it was making a reasonable inference, while the defense argued there was no evidence that anyone put anything in the Jeep. The defense asked the trial court to caution the State against relying on facts not in evidence. The State asked what it was doing wrong, and the trial court instructed, "You're just—you mentioned a whole lot of speculation based on no evidence. . . . And the jury can make all the

inferences they want to make." *Id.* at 71-72. The State promised to "clean that up." *Id.* at 72. At this point, the trial court also said to Craft, "Look. I'm not—we're not going to do this anymore. Your motion is denied." *Id.* at 71.

[14] Craft's counsel attempted to lodge the Intimidation Objection during the State's rebuttal closing arguments, when the prosecutor asked the jury, "[Y]ou didn't see us march any civilians up here, did you? And why is that? Maybe they're afraid of the guy that shot 85 times in the lot, maybe not." *Id.* at 100. The trial court later acknowledged that it had cautioned defense counsel against objecting in this moment and that Craft had lodged a continuing objection. *Id.* at 132.

[15] The jury found Craft guilty on both counts, after which Craft filed a motion for post-verdict judgment of acquittal and a motion to correct errors requesting a new trial. The trial court then denied Craft's motion for a new trial and sentenced Craft to 55 years imprisonment: 50 years for the murder and 25 years for attempted murder, to run concurrently, plus a 5-year firearm enhancement to run consecutively.

[16] Craft now appeals, arguing that the evidence was insufficient to support his conviction and that the State committed prosecutorial misconduct in its closing arguments.

Discussion and Decision

I. Insufficient Evidence

[17] Craft argues that the State failed to prove beyond a reasonable doubt that he fired the bullets that killed Blackmon or that he fired at Officer Garza. When reviewing the sufficiency of the evidence, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We affirm unless no reasonable factfinder could find all elements of the crime proven beyond a reasonable doubt. *Id.* We do not reassess witness credibility or reweigh evidence, as that is the factfinder's role. *Id.*

[18] And yet, Craft's argument is predominantly an impermissible request to reweigh evidence. *See id.* To convict Craft of murder, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally killed Blackmon. *See* Ind. Code § 35-42-1-1. Officer Garza testified that Craft fired a gun at Blackmon, who then fell to the ground. Officer Garza then testified that Craft turned and began shooting at him. "It is well-established that the uncorroborated testimony of one witness may be sufficient by itself to sustain a conviction on appeal." *Scott v. State*, 871 N.E.2d 341, 343 (Ind. Ct. App. 2007) (internal quotation and citation omitted).

[19] Craft argues that: (1) it was difficult to ascertain what happened during the short and chaotic incident; (2) no one witnessed Craft with the Modified Glock the State put forth as the murder weapon; (3) no one could explain how that

gun could be firing at Blackmon and Officer Garza one moment and sitting in the locked Jeep under a sweatshirt the next; and (4) there was no DNA or fingerprint analysis to back up the State's theory of the case. In other words, Craft asks us to discount Officer Garza's testimony, reweighing the evidence in Craft's favor. This is not an appropriate role for this court. Because a reasonable jury could have found Craft guilty based on the evidence presented, Craft's sufficiency argument must fail. *See id.*

II. Prosecutorial Misconduct

[20] Craft next argues that the State's comments in closing argument constituted prosecutorial misconduct necessitating a new trial. The State disagrees. It argues that Craft waived the claim, but even if the claim was properly preserved, there was no misconduct and Craft was not placed in grave peril.

A. Waiver

[21] Craft objected four times during the State's closing argument and moved for a mistrial, which the trial court twice denied. The State argues Craft waived the claim of prosecutorial misconduct by not first requesting an admonishment before seeking a mistrial. In asserting that an admonishment is a necessary prerequisite to preserving a claim of prosecutorial misconduct, the State points to *Ryan v. State*, 9 N.E.3d 663 (Ind. 2014), in which our Supreme Court stated, "To preserve a claim of prosecutorial misconduct, the defendant must—at the time the alleged misconduct occurs—request an admonishment to the jury, *and* if further relief is desired, move for a mistrial." *Id.* at 667 (emphasis added)

(citing *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006); *Maldonado v. State*, 265 Ind. 492, 498, 355 N.E.2d 843, 848 (1976)). The State latches onto the Court's use of the word "and" as a signal that the Court intended to adopt a more stringent standard to preserve this error for review. We disagree.

[22] In *Ryan*, the prosecutor urged the jury to convict for reasons other than guilt. 9 N.E.3d at 667. The defendant failed to object at all at trial, let alone request a jury admonishment or mistrial. *Id.* Tasked only with determining whether fundamental error required relief, our Supreme Court had no call to revisit the standards previously articulated for preserving claims of prosecutorial misconduct. *See Dresser v. State*, 454 N.E.2d 406, 407-08 (Ind. 1983). In *Dresser,* the Supreme Court noted that, when faced with prosecutorial misconduct, a defendant generally should seek an admonishment. *Id.* But "[w]here it is obvious, from the nature and degree of misconduct, that no admonishment could suffice, the motion for one may be dispensed with." *Id.* at 408. The court made it quite plain: admonishment is not required where it would not be effective.

[23] We do not read *Ryan* as intending a substantial shift from this foundation. Other than the court's use of the word "and" in a context not requiring analysis of error preservation, there is no indication *Ryan* sought to alter the requirements to preserve error. Nor does any of the precedent cited in *Ryan* support a change in the law. *Ryan* relies on two other cases where the defendants also failed to proffer any objection to the alleged misconduct: *Cooper*, 854 N.E.2d at 835, and *Maldonado*, 265 Ind. at 498, 355 N.E.2d at 848.

And the line of cases leading to *Ryan* did not have occasion to answer this question either, as the defense failed to request either admonishment or mistrial in the face of prosecutorial misconduct.[4]

[24] Moreover, we can determine no rationale for refusing to review a claim of prosecutorial misconduct where defense counsel believes the prosecutor's conduct is so egregious that only mistrial, and not admonishment, is the proper redress.[5] The State failed to provide such a rationale, either in its brief or during oral argument. Allowing the defendant to skip admonishment and seek a mistrial where warranted is in keeping with our interest in promoting efficiency. *See, e.g.*, *Candler v. State*, 266 Ind. 440, 363 N.E.2d 1233, 1240 (Ind. 1977) ("The purpose of the requirement of a timely objection is to alert the court to alleged errors so as to permit their prevention or immediate correction without waste of time and effort . . . ."). The defense is not forced to beg for relief it believes to be

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[4] *See Dumas v. State*, 803 N.E.2d 1113, 1117 (Ind. 2004) ("Here, although [defendant] objected to the State's comments, he did not request an admonishment nor did he move for a mistrial."); *Brewer*, 605 N.E.2d at 182-83 (finding defendant waived the issue of prosecutorial misconduct because he did not "request further remedial measures" after objecting). *See also Brown v. State*, 572 N.E.2d 496, 498 (Ind. 1991) (finding no reversible error where judge stopped prosecutor and admonished jury, evidence was overwhelming, and defendant did not request admonishment or a mistrial); *Brewer v. State*, 455 NE.2d 324, 327 (Ind. 1983) (finding waiver where defense did not request admonishment nor move for a mistrial); *Lambert v. State*, 448 N.E.2d 288, 291 (Ind. 1983) (finding defendant's "failure to seek any corrective remedy from the trial court" waived the issue); *Bennett v. State*, 423 N.E.2d 588, 592 (Ind. 1981) (finding defendant waived issue where he did not object, did not request admonishment or mistrial, and raised issue for first time on appeal); *Norton v. State*, 273 Ind. 635, 408 N.E.2d 514, 529 (Ind. 1980) (finding issue waived where counsel's only objection was to relevancy and counsel failed to ask that inappropriate statements be stricken or to ask for an admonishment or mistrial).

[5] Though a defendant is not required to seek admonishment to preserve a claim of prosecutorial misconduct, failure to do so could impact the analysis on appeal. *See, e.g.*, *Stacker v. State*, 264 Ind. 692, 348 N.E.2d 648, 697 (Ind. 1976) (finding issue of failure to admonish jury waived, but evaluating failure to grant a mistrial, where trial counsel did not request admonishment but did request mistrial).

fruitless; the parties are on notice of the issue, and we may review the trial court's denial of the requested relief.

[25] Craft objected multiple times and moved for a mistrial based on claims of prosecutorial misconduct. Even though Craft failed to seek an admonishment, the issue was properly preserved for our review.

B. Substantive Claim

[26] When reviewing a claim of prosecutorial misconduct, we must first determine whether the prosecutor engaged in misconduct and then consider whether that misconduct placed the defendant in a position of grave peril to which he should not have been subjected. *Collins*, 966 N.E. 2d at 106. Misconduct is measured by case law and the Rules of Professional Conduct. *Id.* (citing *Cooper*, 854 N.E.2d at 835). "The gravity of peril is measured by the probable persuasive effect of the misconduct on the jury's decision rather than the degree of impropriety of the conduct." *Id.* A prosecutor must confine closing argument to comments based only upon the evidence presented in the record. *Oldham v. State*, 779 N.E.2d 1162, 1176 (Ind. Ct. App. 2002) (citing *Lambert*, 743 N.E.2d at 734).

[27] "[R]eversal is required where the evidence is close and the trial court fails to alleviate the prejudicial effect of the misconduct." *Turnbow v. State*, 637 N.E.2d 1329, 1333 (Ind. Ct. App. 1994) (quoting *Everroad v. State*, 571 N.E.2d 1240, 1244 (Ind. 1991)). Repeated instances of misconduct "which evidence a deliberate attempt to prejudice the defendant" may also require reversal, even

where any individual instance would not. *Id.* But "[w]here there is overwhelming independent evidence of a defendant's guilt, error made by a prosecutor during the closing argument may be harmless." *Norris v. State*, 113 N.E.3d 1245, 1252 (Ind. Ct. App. 2018).

[28] Craft claims that the State repeatedly argued facts not in evidence and baselessly maligned Craft's character right before jury deliberations. He claims that these arguments were an impermissible attempt to convict him for reasons other than his guilt. *See generally Oldham*, 779 N.E.2d at 1176.

[29] Assuming *arguendo* that the prosecutor's statements in closing cumulatively amounted to misconduct, Craft fails to convince us that these statements placed him in grave peril. Given the evidence against Craft, the probable persuasive effect of the prosecutor's statements was minimal. *See Collins*, 966 N.E.2d at 106. The State was required to prove that Craft knowingly or intentionally killed Blackmon. *See* Ind. Code § 35-42-1-1. Officer Garza's testimony that he watched Craft shoot Blackmon satisfied that burden. *See Scott*, 871 N.E.2d at 343; *supra* Part I.

[30] The State also presented evidence that Craft owned the gun that fired most of the bullets during the shooting—including video evidence that the gun was previously in his possession and testimony that the gun was recovered from Craft's car. Additionally, the evidence showed that Craft wore a bulletproof vest that night in anticipation of the shooting. The State's allegedly improper arguments—inventing an explanation for how the murder weapon went from

Craft's hand to his car and maligning Craft's character—fail to tip the scales towards grave peril.

[31] Craft also complains of the proximity of the improper statements to jury deliberations. Even more proximate, however, were the jury instructions. These included explanations of the presumption of innocence and reasonable doubt, and a reminder that statements made by attorneys are not evidence. App. Vol. II, pp. 144-58.

[32] Altogether, we cannot say that the alleged misconduct was so persuasive as to place Craft in grave peril to which he should not have been subjected. *See Collins*, 966 N.E. 2d at 106. Craft has failed to meet his burden for reversal. *See Maldonado*, 265 Ind. at 498, 355 N.E.2d at 849.

[33] Craft's convictions are affirmed.

Bailey, J., and May, J., concur.