**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A24-1310**

State of Minnesota,
Respondent,

vs.

Anthony Jabri Santos,
Appellant.

**Filed June 30, 2025**
**Affirmed**
**Bjorkman, Judge**

Dakota County District Court
File No. 19HA-CR-23-545

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

Kathryn M. Keena, Dakota County Attorney, Todd P. Zettler, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Harris, Judge.

**NONPRECEDENTIAL OPINION**

**BJORKMAN**, Judge

Appellant challenges his conviction of aiding and abetting first-degree aggravated robbery, arguing that the cumulative effect of evidentiary errors, violation of the district

court's sequestration order, and unobjected-to prosecutorial misconduct denied him a fair trial. We affirm.

## FACTS

During the morning of November 21, 2021, J.S. was starting his vehicle outside his apartment building when a silver four-door sedan with tinted windows pulled up next to him. Three or four men got out of the sedan and "put guns all over [him]." J.S. recognized one of the men as Eugene Santos, a long-time friend with whom he had a recent falling out, but did not recognize the other men. The men began rifling through J.S.'s car. He tried to flee, but they hit him in the head. The men took J.S.'s wallet, which contained his driver's license and money, and his backpack.

J.S.'s neighbor, M.N., heard yelling and looked out her window to see what was going on. She saw three or four men pushing and pulling on J.S. and heard J.S. yelling, "No, no, no." She also thought she saw one of the men holding a gun. The men noticed M.N. watching and drove off in their vehicle. M.N. called out to J.S. to ask if he wanted her to call police; he said yes. She called 911, and an officer responded in a few minutes and asked J.S. about the incident. As he spoke with J.S., he learned that another officer had stopped a vehicle matching the description of the suspects' vehicle. The officer then left the scene with J.S. to identify the people in the stopped vehicle.

The officer who had stopped the vehicle, Officer Emily Danner, identified the driver as appellant Anthony Jabri Santos. At one point, when Officer Danner expressed concern about a passenger, Santos said, "That's my uncle." But before Officer Danner was able to identify the others in the vehicle, and before the officer with J.S. had arrived, Santos drove

off. Police briefly pursued the vehicle but ended the pursuit for public-safety reasons. Officer Danner later confirmed that one of the backseat passengers was Eugene Santos, whom J.S. had named as one of the suspects.

That afternoon, Officer Tristan Jakobson responded to an abandoned vehicle "associated with [a] call" that a partner of his was "working on." He photographed the vehicle and had it towed to the police evidence bay. The vehicle was the same one Santos had been driving.

Almost two weeks later, police met with J.S. to return his wallet and backpack to him, which were located in the recovered vehicle. They also took a formal, video-recorded statement from him about the incident.

Santos was charged with aiding and abetting first-degree aggravated robbery. At trial, J.S. and M.N. testified consistent with the facts above. So did several officers involved in responding to and investigating the incident, including Officer Danner and Officer Jakobson, over Santos's objection that those two witnesses violated the court's sequestration order. Also over Santos's objection, the district court admitted the audio recording of M.N.'s 911 call and the video recording of J.S.'s statement to police. The jury found Santos guilty, and the district court sentenced him to 58 months in prison.

Santos appeals.

## DECISION

### I. The district court did not abuse its discretion by admitting the audio recording of M.N.'s 911 call and the video recording of J.S.'s statement to police.

We review a district court's evidentiary rulings for an abuse of discretion. *Dolo v. State*, 942 N.W.2d 357, 362 (Minn. 2020). To obtain reversal, the appellant must demonstrate both error and resulting prejudice. *State v. Griffin*, 846 N.W.2d 93, 103 (Minn. App. 2014), *rev. denied* (Minn. Aug. 5, 2014).

The proponent of evidence must establish its relevance, including an adequate foundation for its admission. *Turnage v. State*, 708 N.W.2d 535, 542 (Minn. 2006). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Minn. R. Evid. 901(a). One type of authentication is testimony from a witness with knowledge that "a matter is what it is claimed to be." *Id.* (b)(1). This type of authentication is appropriate for evidence like photographs and video recordings if a witness confirms that the evidence is a "representation" of something they observed. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 164 (Minn. App. 1997); *see Scott v. State*, 390 N.W.2d 889, 893 (Minn. App. 1986) (concluding testimony of security guard who watched football game was sufficient to authenticate video of the game).

The state presented this type of testimony to authenticate the audio recording of M.N.'s 911 call and the video recording of J.S.'s statement to police, eliciting an affirmation from each that the recording in question is a "fair and accurate depiction" of their statements and interaction with authorities. Santos asserts that this testimony did not

establish a sufficient foundation to admit the two recordings. We address each recording in turn.

**Audio Recording**

Santos contends M.N.'s testimony that the audio recording is a "fair and accurate" representation of her 911 call is insufficient to establish foundation for the recording because the state did not fulfill the "seven foundational elements that must be established before a tape recording can be admitted" that our supreme court announced in *Turnage*. 708 N.W.2d at 542 (quoting *Furlev Sales & Assocs., Inc. v. N. Am. Auto. Warehouse, Inc.*, 325 N.W.2d 20, 27 n.9 (Minn. 1982)). This argument is unavailing. Unlike this case, *Turnage* did not involve authentication by participants in the recorded statements. It involved a technician's testimony purporting to authenticate a tape recording of prisoner phone calls. *Id.* This distinction is significant. The authentication task in *Turnage* required other foundational elements precisely because the state lacked what is present here—witnesses who knew, based on personal experience, that the recording in question is what it is claimed to be—a conversation in which they took part. Santos identifies no binding authority applying *Turnage* (or otherwise applying the *Furlev* requirements) in such a context. Nor have we discovered any. Rather, the plain language of Minn. R. Evid. 901(b)(1), together with *Scott* and *S.A.M.*, permit authentication of an audio (or video) recording based on the testimony of a person with knowledge of the events captured in the recording. As such, the district court did not abuse its discretion by admitting the audio recording based on M.N.'s testimony that it fairly and accurately represents her 911 call.

**Video Recording**

Santos's only challenge to the video recording is that J.S. "could not" establish that the recording had not been "altered or modified" and that it was, in fact, altered because there is an "unexplained" lapse of five seconds in the recording. We are not persuaded. Santos does not dispute that the recording is otherwise admissible under Minn. R. Evid. 901(b)(1) based on J.S.'s testimony that it is, as the state argued, an accurate depiction of the statement he made to police. And Santos identifies nothing in rule 901 or caselaw that precludes admission of an otherwise admissible video recording simply because it contains a brief lapse, particularly when the brevity of the lapse—five seconds out of a seven-minute video—and the absence of any mention of it in the record shows that it had no material impact on the fidelity of the recording. On this record, we discern no abuse of discretion by the district court in admitting the video recording.

## II. The district court did not abuse its discretion by declining to exclude the testimony of the officers who violated the court's sequestration order.

Minn. R. Crim. P. 26.03, subd. 8, permits district courts to "sequester witnesses from the courtroom before their appearance." Violation of a sequestration order does not warrant a new trial unless "[p]rejudice resulting from [the] violation . . . [is] shown." *State v. Erdman*, 383 N.W.2d 331, 334 (Minn. App. 1986), *rev. denied* (Minn. Apr. 24, 1986); *see State v. Martin*, 773 N.W.2d 89, 110 (Minn. 2009) (citing *Erdman*, 383 N.W.2d at 334).

It is undisputed that Officers Danner and Jakobson violated the sequestration order by speaking to each other in the courtroom. Indeed, the prosecutor brought the violation to the court's attention, acknowledging it as such. But it is equally undisputed that the

contact between the two was limited: Officer Danner approached Officer Jakobson and said, "Hi. Long time no see." Santos expressly "concedes that he did not demonstrate prejudice" from the violation but urges us to conclude that the district court nevertheless should have excluded the officers' testimony as a sanction for the violation. On this record, and given the plain parameters of binding caselaw, we discern no abuse of discretion by the district court in declining to do so.

## III. Santos has not demonstrated plain error in the prosecutor's unobjected-to rebuttal closing argument.

When an appellant does not object during trial, we review claims of prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this standard, the appellant bears the burden of showing that there was an error, and that it was plain. *Id*. If the appellant establishes plain error, "the burden shifts to the [s]tate to demonstrate that the plain error did not affect the [appellant]'s substantial rights." *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017).

Santos argues that the prosecutor committed plainly evident misconduct during rebuttal closing argument by urging the jurors to place themselves in J.S.'s shoes. Santos is correct that it is improper for the state to "invite the jurors to put themselves in the shoes of the victim." *State v. Thompson*, 578 N.W.2d 734, 742 (Minn. 1998) (quoting *State v. Johnson*, 324 N.W.2d 199, 202 (Minn. 1982)). But this rule specifically prohibits urging jurors to sympathize with the victim's experience of the offense. *See Thompson*, 578 N.W.2d at 742 (discussing argument that victim was "awakened to probably one of the most terrible sights that any mother can see"); *Johnson*, 324 N.W.2d at 202 (concluding no

error in argument urging jurors to consider whether they would be "put in fear if someone followed them at night and shot at them" partially because it was not "calculated to cause the jury to decide the case on the basis of passion rather than reason"). It does not preclude asking jurors to call upon their own experience in assessing a victim's credibility. *State v. Jones*, 753 N.W.2d 677, 692 (Minn. 2008); *see Martin*, 773 N.W.2d at 106 (recognizing that the state may "argue that a witness was or was not credible"). Nor does it preclude the prosecutor from "fairly meet[ing]" defense arguments about a victim's credibility. *Martin*, 773 N.W.2d at 106. In determining whether a prosecutor struck the appropriate balance, we consider the closing argument as a whole. *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006).

Santos points to two segments of the prosecutor's rebuttal as plain misconduct. In the first segment, the prosecutor argued:

> Ask yourself the question: When you got guns pointed at your head, people ransacking the car, threatening to kill you, hitting you in the head, are you really—is it reasonable for you to say three or four [people], or do you have to be very specific about that?

This argument responded to defense counsel's statement that J.S. "vacillated, saying that three or four or five people robbed him." This statement challenged J.S.'s credibility, and the prosecutor's rebuttal responded to that challenge by asking the jurors to consider whether the claimed "vacillat[ion]" was understandable under the circumstances or a mark of dishonesty. Indeed, Santos seems to acknowledge as much by asserting, in discussing prejudice, that the prosecutor's comments were "clearly intended to directly counter defense counsel's argument and persuade the jury that the victim's demeanor and

inconsistent statements were understandable under the circumstances." As such, the prosecutor's argument was not error, let alone plain error.

In the second challenged segment, the prosecutor argued:

> [Defense counsel] talked about [J.S.] not wanting to be here. Would you? Would you want to be here testifying about the time that you got robbed, having the Defendant sitting across from you?

Just after the segment that Santos highlights, the prosecutor went on:

> That he was rambling and—yeah, you're right, I did have a little hard time controlling him. But compare that with what the first video that you saw with [the officer who responded to the 911 call].
>
> . . . .
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> . . . and compare it to the interview he did back at the police station.

This argument plainly responded to defense counsel's suggestion that J.S. did not tell the jury "the full story" because he "didn't want to be here," he was "rambling and disjointed" in his testimony, and the prosecutor "had a tough time keeping him on track." Once again, the prosecutor countered a defense challenge to J.S.'s credibility by asking the jury to consider, based on their own experience, whether J.S.'s uncooperativeness was about nerves rather than dissembling, and whether his rambling testimony was merely the way he communicates (as indicated in the other evidence) or was a mark of fabrication. As

such, it likewise was not erroneous. On this record, Santos is not entitled to relief based on the prosecutor's rebuttal argument.[1]

**Affirmed.**

[1] Santos contends the claimed errors collectively denied him a fair trial. *State v. Yang*, 774 N.W.2d 539, 560 (Minn. 2009) (recognizing that demonstrated errors, "when taken cumulatively," may have the effect of "denying [the] appellant a fair trial"). But as we discuss above, the only trial error that Santos has identified is the nonprejudicial violation of the sequestration order. As such, he is not entitled to relief based on cumulative error.