

NOT DESIGNATED FOR PUBLICATION

No. 124,984

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

CAMERON WAYNE KING,
Appellant.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; ERIC WILLIAMS, judge. Submitted without oral argument. Opinion filed December 22, 2023. Affirmed.

Korey A. Kaul, of Kansas Appellate Defender Office, for appellant.

Lance J. Gillett, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before COBLE, P.J., MALONE and WARNER, JJ.

WARNER, J.: A jury convicted Cameron King of several crimes after he stole a car. King appeals, seeking reversal of his convictions and a new trial. He asserts that the district court erred by improperly admitting hearsay evidence and the prosecutor erred during closing arguments. After carefully reviewing the parties' arguments and the record, we find that a new trial is not required and affirm King's convictions.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2020, Jacob Rhyne's black Camaro was stolen from outside his apartment complex in Derby. That afternoon, Rhyne and his wife, Kayla, were watching TV inside their apartment when they heard an engine start. Kayla looked out the window and saw Rhyne's Camaro was gone.

Rhyne grabbed the keys to Kayla's car and drove after his Camaro. He caught up with it by following the sound of its loud engine, and he tailed it as it headed back towards his apartment complex. After the Camaro stopped to pick up a woman on Countryview Drive, Rhyne pulled up next to it, got out of his car, opened the Camaro's passenger-side door, and reached towards the console to knock it out of gear.

The person driving the Camaro "floored it," but Rhyne held onto its door. He was dragged along the asphalt, suffering bruises and scrapes, before he was forced to let go. The Camaro also hit Kayla's car as it drove away, hyperextending the driver-side door.

Rhyne gave police a description of the driver—a white man with a beard in his late twenties or early thirties wearing a Carhartt jacket, ball cap, blue shirt, and white shoes. Detective Bart Evans, who was familiar with King and knew that he was romantically involved with a woman who lived on Countryview Drive, showed Rhyne a picture of King. Rhyne identified King as the person who stole his car.

Five days later, Rhyne and Kayla spotted the Camaro again. Kayla called the police, and Sheriff's Deputy Joshua Elpers was dispatched to the location. Deputy Elpers began following the Camaro, and a high-speed chase ensued, reaching over 100 miles per hour. The Camaro eventually crashed, and the driver fled the wreckage. After arriving at the crash, Deputy Elpers spoke with a witness who said he saw "the black Camaro come up out of the ditch . . . and a heavier set white male [get] out of the driver's seat."

King was arrested and later participated in a recorded interview with Detective Evans. There, King admitted to stealing the Camaro. He also admitted to the confrontation with Rhyne and that he had dragged Rhyne along the road as Rhyne held on to the car. The State charged King with felony theft; aggravated battery by recklessly causing bodily harm with a deadly weapon; criminal damage to property; and leaving the scene of an accident—all based on the events of November 1.

At trial, the State presented evidence of King's recorded confession. Deputy Elpers also testified, describing the interaction he had with the witness at the scene of the crash. Deputy Elpers stated that the witness positively identified King as the person who the witness saw exit the Camaro and that King was later apprehended by other officers based on what the witness told him. King's attorney objected several times that this recital was hearsay, but the court overruled the objections. It explained that "[the testimony is] not being offered for the truth of the matter of what that individual witness saw. What's being offered [is] what this deputy did based upon that statement."

Later, during closing arguments, the prosecutor explained why King had used the Camaro as a deadly weapon (an element of aggravated battery):

"Now, what makes this an aggravated battery? If you look at the instructions on page four is that it was committed with a deadly weapon. Well, a souped up 2011 Camaro is [a] deadly weapon. If you get hit by a Camaro, if you're drug along the road by a Camaro, that could kill you. That's just common sense. You-all know that. You've seen the news. You've seen what a car crash can do to a human body."

The jury ultimately convicted King as charged, and he was sentenced to seven months' imprisonment. He now appeals.

DISCUSSION

King challenges his convictions in two ways. He argues that the district court erred by improperly admitting hearsay evidence at trial. He also argues that the prosecutor erred during closing argument by describing how the car was used as a deadly weapon. The State counters, arguing that neither issue warrants reversal of King's convictions because, even if these were errors, they were harmless.

King argues that the district court erred by improperly admitting hearsay evidence. Appellate courts review the admissibility of hearsay evidence for an abuse of discretion. *State v. Gutierrez-Fuentes*, 315 Kan. 341, 351, 508 P.3d 378 (2022). A judicial action constitutes an abuse of discretion if it is arbitrary, fanciful, or unreasonable or is rooted in a legal or factual error. 315 Kan. at 351.

Hearsay evidence is "a statement which is made other than by a witness while testifying at the hearing, offered to prove the truth of the matter stated." K.S.A. 2022 Supp. 60-460. And hearsay is inadmissible unless it falls under an enumerated exception to the rule. *State v. Seacat*, 303 Kan. 622, 631, 366 P.3d 208 (2016).

One such exception to the rule against hearsay is evidence offered to explain an officer's subsequent conduct—why an officer did something after hearing the statement—rather than offered to prove the substance (the truth) of what the officer heard. *State v. Johnson*, 253 Kan. 75, 87-88, 853 P.2d 34 (1993). But courts must carefully monitor this exception to protect against abuse. See *State v. Thompson*, 221 Kan. 176, 178-79, 558 P.2d 93 (1976).

An appropriate use of the exception is when "a police officer explains the reason he approached a suspect or went to the scene of the crime by stating that he did so 'upon information received' because this statement only explains "the reason for his

approaching the scene and his subsequent conduct." 221 Kan. at 178. But the State cannot directly relate the substance of the witness' statement at trial nor use it to create an "inference [that] would have pointed to the identity and guilt of the defendant." 221 Kan. at 179. Put another way, the State cannot simply invoke this exception to circumvent the rule against hearsay.

In this case, King's attorney objected several times as Deputy Elpers testified about what the witness said he saw at the scene of the crash. King continues to argue on appeal that the deputy's statement that the witness positively identified King was inadmissible hearsay evidence because it was offered for the truth of the matter asserted—that King was the person driving the Camaro when it crashed. The district court overruled the objections, stating that "[the testimony is] not being offered for the truth of the matter of what that individual witness saw. What's being offered [is] what this deputy did based upon that statement."

We disagree with the district court's assessment. This testimony was not offered to explain any actions Deputy Elpers took after hearing what the witness told him—the State itself admits that the deputy's "actions based on the purported identification are somewhat vague." Instead, this testimony was used to identify King as the driver of the Camaro at that point, inferring that he committed the crimes on November 1. The testimony was hearsay and should not have been admitted at trial.

Regardless, we find that admitting this evidence did not affect the outcome of the trial and was thus harmless error. See K.S.A. 2022 Supp. 60-261. King confessed to Evans—multiple times during a recorded interview—that he stole the Camaro. King concedes as much on appeal, but he urges us to ignore his confession because "he was only telling Detective Evans what he wanted to hear." But the jury heard evidence of King's confession at trial, including King's own admission that he had stolen the Camaro on November 1 and dragged Rhyne down the road. And Rhyne had positively identified

King as the person who stole his car. While the district court erred by admitting hearsay evidence that another person had identified King as the Camaro's driver on a different date, King has not shown that this error affected the outcome of his trial.

King also claims the prosecutor's statements during closing argument improperly ventured outside the evidence presented when he said, "If you get hit by a Camaro, if you're drug along the road by a Camaro, that could kill you." King concedes that the statement "if you're drug along the road by a Camaro" is a fair comment about the evidence, but he asserts that the prosecutor's remark about getting hit by the Camaro was not supported by the evidence and made it easier for the State to prove King used it as a deadly weapon. Because Rhyne's injuries were "slight," King asserts, the prosecutor improperly "tipped the balance towards conviction" by implying other deadly ways a Camaro could be used.

Appellate courts review claims of prosecutorial error in two steps: error and prejudice. *State v. Sherman*, 305 Kan. 88, 109, 378 P.3d 1060 (2016). First, we look to whether the statement strayed beyond the wide latitude given to prosecutors during closing arguments. *State v. Hall*, 292 Kan. 841, 848, 257 P.3d 272 (2011). We review these statements within the context in which they were made, "rather than analyzing [them] in isolation." *State v. Bodine*, 313 Kan. 378, 406-07, 486 P.3d 551 (2021). We will not find error if the statement is consistent with the evidence and does not misstate the law. *Hall*, 292 Kan. at 848. If an error did occur, we then determine whether it deprived the defendant of a fair trial. *Sherman*, 305 Kan. at 98, 109. An error is harmless—meaning it did not prejudice the defendant—if the State shows beyond a reasonable doubt that the error "'did not affect the outcome of the trial in light of the entire record.'" *State v. Blansett*, 309 Kan. 401, 412, 435 P.3d 1136 (2019).

We find no reversible error here. Viewed within its context, we are not convinced that this statement falls outside the wide latitude given prosecutors during closing

arguments. This statement was neither a misstatement of the law nor inconsistent with the evidence presented at trial. And prosecutors—like all lawyers—must be given latitude to craft an oratorical argument based on the facts. As Judge McAnany observed almost two decades ago in *State v. Henderson*, 32 Kan. App. 2d 1202, 1210, 96 P.3d 680 (2004):

"The constitutional insistence upon a fair trial for the accused does not demand that we ban oratory from the courtroom. To strip trial lawyers of analogies, similes, allusions (be they historic, poetic, literary, or scientific), and other rhetorical devices would reduce them to little more than green-eye-shaded bookkeepers, recounting for others the facts and figures they have accumulated during the course of the trial."

And even if we were to presume that the prosecutor's statements here crossed the line, any error was harmless. King himself admitted to stealing the car and dragging Rhyne down the road. We are convinced that the jury would have convicted King of these crimes—including aggravated battery—even if the prosecutor had never mentioned being hit by car. In short, any error in closing argument did not affect the outcome of King's case and does not require a new trial.

King admitted that he had stolen Rhyne's Camaro and had driven the Camaro for a short length of time while a person (later identified as Rhyne) clung to the door. This evidence, combined with the other admissible evidence presented at trial, renders his challenges to the deputy's hearsay and the prosecutor's rhetoric harmless. Thus, we affirm King's convictions.

Affirmed.