



***In the
Missouri Court of Appeals
Western District***

STATE OF MISSOURI,	)	
	)	
Respondent,	)	WD86568
	)	
V.	)	OPINION FILED:
	)	NOVEMBER 4, 2025
IAN JAMES McCARTHY,	)	
	)	
Appellant.	)	

Appeal from the Circuit Court of Jackson County, Missouri
The Honorable Marco A. Roldan, Judge

Before Division One: Janet Sutton, Presiding Judge, Gary D. Witt, Judge and W.
Douglas Thomson, Judge

Ian McCarthy appeals the judgment of the Circuit Court of Jackson County, Missouri (“trial court”),¹ finding him guilty, following a jury trial, of murder in the first degree, Section 565.020.² On appeal, McCarthy alleges that the trial court: (1) abused its discretion in refusing to declare a mistrial after counsel for the State commented on McCarthy’s decision not to testify at trial; (2) abused its discretion in refusing to admonish the prosecutor for repeatedly referring to McCarthy as his expert’s “client”; and (3) plainly erred in failing to *sua sponte* interrupt the State’s closing argument when

¹ The offense occurred in Henry County, but venue was transferred to Jackson County.

² All statutory references are to the Revised Statutes of Missouri (2016) as updated by supplement as of August 6, 2017, the date of the offense.

it improperly mentioned the “trauma” of the victim and others. McCarthy raises a fourth point on appeal that does not allege error by the trial court but instead alleges misconduct by the prosecutor. We affirm the judgment of the trial court.

Factual and Procedural Background

The facts, in the light most favorable to the jury’s verdict, *State v. Edwards*, 116 S.W.3d 511, 520 (Mo. banc 2003), are as follows:

On the evening of August 6, 2017, McCarthy stopped by a convenience store in Clinton, Missouri. McCarthy ran into a friend and stopped to chat for a while. When McCarthy exited the brightly lit parking lot of the convenience store, he did not turn on his headlights; soon after, Officer G.M. (“Victim”)³ pulled McCarthy over for driving without his headlights. After radioing McCarthy’s license plate number to dispatch, Victim exited his patrol vehicle. McCarthy also exited his vehicle, holding an AR-15. Within seconds, Victim and McCarthy exchanged gunfire. Victim radioed his dispatch that shots had been fired, and Sergeant P.M., who was nearby, heard the radio communication and was worried because Victim sounded like something was wrong. Sergeant P.M. found Victim in the street, slumped down near his patrol vehicle. Victim’s handgun was lying under his hand, and there was a large pool of blood on the ground. Sergeant P.M. removed Victim’s protective vest to reveal a large hole in Victim’s chest.⁴ Victim appeared close to death.

³ Pursuant to Missouri Supreme Court Operating Rule 2.02(c)(3), we do not list the names of individuals other than parties.

⁴ The protective vests used by the Clinton Police Department at that time were insufficient to stop a bullet fired from a rifle.

After the shooting, but before Sergeant P.M. arrived, McCarthy sped off in his vehicle but crashed into an embankment not far away. Witnesses heard gunshots and saw McCarthy crash the vehicle and run off into the woods.

Police found a spent rifle cartridge casing about twenty feet away from Victim's patrol car, and several spent 40-caliber shell casings were found in or near Victim's patrol car. Residents found and gave to police a spent 40-caliber Smith & Wesson bullet, which had been fired by Victim's gun, near McCarthy's abandoned car. They also found McCarthy's cell phone. McCarthy's vehicle had damage from multiple gunshots. Police recovered "quite a bit" of rifle ammunition compatible with an AR-15 in McCarthy's vehicle.

Nearby surveillance footage captured the shooting, but not well and not fully detailed. McCarthy's feet can be seen and Victim appears standing next to his open patrol car door with a spotlight illuminating the patrol car. The spotlight travels from the patrol car to the pavement to McCarthy's car when McCarthy drives away. A convenience store's surveillance footage also captures customers' reactions to the shooting, and at trial, a compilation of the video footages with audio from dispatch was shown to the jury.

Police searched McCarthy's home and found a rifle box with a serial number that matched a rifle that had been purchased for McCarthy by W.N. as a "straw party."⁵

⁵ A straw party is a person who acts as a front for another person in a transaction. Because McCarthy was a felon, he could not purchase the gun in his own name, and his friend illegally purchased it for him.

When police questioned W.N., he took them to a rural location where the AR-15 was located in a pond near the side of a gravel road. The spent cartridge found near Victim came from McCarthy's rifle. Bullet fragments from Victim's body were also consistent with bullets compatible with the rifle. Victim's single gunshot wound to the left side of his chest was fatal and would have caused Victim to lose consciousness within a minute and die within five minutes. Immediate medical treatment would not have saved his life.

After hearing about the shooting, K.S. and J.S., husband and wife, went to police to report an incident that had happened a couple of weeks to a month earlier. K.S., the wife, worked with J.J., who also knew her sons. J.J. brought his friend, McCarthy, to K.S.'s house to meet her husband, J.S., because J.S. and McCarthy were both gun enthusiasts. On the couple's back deck, McCarthy showed J.S. and their sons his AR-15, which was outfitted with a "red dot" scope, a flashlight, and a bipod grip. The gun was loaded, so J.S. removed the magazine and ejected the cartridge in the chamber before examining it to make sure it was safe. There were cars driving by, and McCarthy became increasingly nervous, finally asking J.S. if they could go back inside. McCarthy also told J.S. about "all the things he had in his vehicle."

Both J.S. and K.S., who overheard some of the men's conversation, reported that McCarthy said words to the effect of "if he was to ever get pulled over he would make sure [the police] didn't take him to jail, and that they would—he would make sure that they—he would kill them." McCarthy said there was "enough stuff in his vehicle to, as he put it, I can hold off the whole police department." McCarthy also described himself as a good shot. McCarthy said he would not go back to jail, and, becoming increasingly

agitated, McCarthy “picked his AR up off the table with the magazine and shoved the magazine in it real fast.” This caused J.S., who used to be in law enforcement, to draw his sidearm and order McCarthy to leave his house and not come back.

K.S. and J.S. felt terrible after they heard about Victim’s shooting, and decided they needed to tell police about the incident. They had not reported it earlier because J.S. suspected McCarthy, like “most people in Clinton,” was just displaying an “I-want-to-be-a-thug attitude.”

On August 8, 2017, two days after the shooting, Trooper T.W. was called out to check on a pedestrian walking along Highway U, southeast of Clinton. The pedestrian turned out to be McCarthy, who told Trooper T.W., “I’m who you’re looking for.” The Trooper took McCarthy to a hospital to be treated for a gunshot wound in his right buttock. On the drive to the hospital, McCarthy asked Trooper T.W. whether Victim had died and whether Missouri had the death penalty. McCarthy told Trooper T.W. both that the events felt like a dream and he did not know what happened, and also that he remembered shooting his gun and getting shot in the buttocks. McCarthy remembered driving off and crashing his car and said that the gun was probably in the woods. McCarthy said about the shooting, “I mean, it was clearly my fault,” and also said that he “spent my whole life getting mad at people who murder people,” and that now he had become what he hates. Trooper T.W. had stopped McCarthy for a traffic offense in 2013 without issue.

Trooper J.C. had also had an interaction with McCarthy, in 2015, when McCarthy was a passenger in a vehicle Trooper J.C. stopped. During the stop, McCarthy consented

to a search of his person, and Trooper J.C. felt a magazine for a pistol in McCarthy's pocket. Trooper J.C. asked McCarthy whether he had a pistol on him, and McCarthy indicated that he did and pulled up his shirt to reveal the pistol. Trooper J.C. quickly ordered McCarthy not to reach for the pistol, and McCarthy obeyed the command. McCarthy was arrested for being a felon in possession of a firearm, but he was ultimately released; Trooper J.C. notified McCarthy that the prosecutor would decide whether to file charges for the possession of the firearm. It was about two weeks later that W.N. purchased the AR-15 for McCarthy.

During McCarthy's trial, his cellmate, J.M. ("Cellmate") testified that he and McCarthy had talked about why they were in jail. Cellmate said McCarthy had told him that he'd sent text messages to all of his friends saying he wanted a shootout with police, and so he took his AR-15 and tried to get pulled over. McCarthy had used the phrase "suicide by cops." Cellmate testified that McCarthy told him of the incident, stating that after Victim ordered McCarthy to get back into his vehicle, McCarthy pulled his firearm, aimed at Victim, and "found the black of the vest in his scope and knew he had made his mark." McCarthy knew he had hit Victim by the way Victim was firing back. McCarthy told Cellmate that he took off in his car but wrecked it and took off on foot, dropping his cell phone, and went to his friend J.J.'s house. J.J. is the same friend who took McCarthy to meet J.S. and show him his rifle. After the shooting J.J. took McCarthy to W.N.'s house to have W.N. get rid of the gun, and then J.J. dropped McCarthy off in the woods. McCarthy told Cellmate that he was a "damn good aim."

At trial, McCarthy acknowledged that he was responsible for Victim's death; his theory of defense was that he was unable to act with deliberation or cool reflection as the first-degree murder statute requires due to many factors, including: neglect, physical, and sexual abuse he suffered as a child; homelessness; lead poisoning; traumatic brain injury and a skull fracture that he had received from being hit in the head with a pipe and a baseball bat; post-traumatic stress disorder; and, most recently, the death of his grandmother, who was the only family he was close to and who had supported him financially. His sister, who did not grow up with him after their parents separated, testified that he suffered horrible neglect and abuse by his mother and her various associates. McCarthy also had extensive expert testimony from various doctors, including a neuroradiologist ("Neuroradiologist"), a pediatric neurologist, a psychologist, and psychiatrist, J.M. ("Psychiatrist").

The jury found McCarthy guilty, and he was sentenced to life in prison without the possibility of parole. This appeal follows, and additional facts will be included in the discussion of the points on appeal.

Defendant's Right to Testify or Not to Testify

McCarthy's first point on appeal is that the trial court erred in refusing to grant a mistrial during the testimony of Neuroradiologist because the State's counsel asked him a question that implicated McCarthy's right not to testify at his trial. We disagree.

Standard of Review

"A mistrial is a drastic remedy that should be granted only when prejudice to a defendant can be removed in no other way." *State v. Coulter*, 255 S.W.3d 552, 555 (Mo. App. W.D. 2008). "The decision to grant a mistrial lies within the sound discretion of the trial court and is reviewed only for an abuse of discretion." *Id.* An abuse of discretion will be found only when the trial court's ruling is "clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." *Id.* (citation modified).

Analysis

During Neuroradiologist's cross-examination by the State, Neuroradiologist admitted that he had never met with or examined McCarthy and was testifying based on his review of McCarthy's medical records. He was unaware of what symptoms McCarthy had or had not displayed. Neuroradiologist was not aware of any scientific test that could determine whether an individual's brain damage was responsible for the individual having committed a crime. Neuroradiologist testified that the brain does not heal or regrow, and so McCarthy's traumatic brain injuries, which he had sustained in 2004, would have been present when Trooper T.W. pulled him over without incident in 2013.

In his testimony, Neuroradiologist seemed to be making every attempt to testify favorably for McCarthy. For example, he testified that he did not know that McCarthy was aiming for Victim, did not know that McCarthy intentionally activated the spotlight on his rifle before he shot Victim, and testified, “this is all I think reflective of somebody that obviously was not thinking properly.” When counsel for the State asked Neuroradiologist about the evidence that McCarthy had expressed wanting to kill a police officer, the following exchange occurred:

Q: Well, you’re right, “his motivation” is probably a bad word. His thought process, whether it’s right or wrong, was that if I’m pulled over by a police officer I’m going to engage in a gun battle, correct?

A: Well, I think he talked that. Again, people, you know, talk the talk; they don’t always walk the walk.

Q: Except Mr. McCarthy did. He talked the talk and he walked the walk, didn’t he, Doctor?

A: Yes, but as far as intent—

Q: Was your answer yes, he did?

A: Well, I would say that he—that there was an exchange of fire. But, again, as far as intent, I don’t know whether his intent was to be killed or whether his intent was to evade. Again, I think—

Q: Well, and again, if we want to look at his potential intent we could ask him, correct?

At this point, McCarthy’s counsel objected that the State’s question was a comment on McCarthy’s right to testify or not testify, and counsel moved for a mistrial. The State’s counsel (K.Z.) responded that it was a “slip of the tongue” and that he was trying to make the point that Neuroradiologist could have met with and questioned

McCarthy, but he did not. The trial court denied the motion for a mistrial but instructed the jury to disregard the last question.

“It is impermissible for a prosecutor to comment, either directly or indirectly, on a defendant’s failure to testify.” *Coulter*, 255 S.W.3d at 556. “A direct reference occurs when the prosecutor uses explicit, plain references—such as the words ‘defendant,’ ‘accused,’ ‘testify,’ or their equivalent.” *State v. Rice*, 573 S.W.3d 53, 75 (Mo. banc 2019). “On the other hand, an indirect reference is one reasonably apt to direct the jury’s attention to the defendant’s failure to testify.” *Id.* (citation modified). “When examining whether an improper reference to the defendant’s right to remain silent has a prejudicial effect, an appellate court must consider the comment in the context in which it appears.” *Id.* (citation modified). As McCarthy points out, “where an objection is made and overruled, a direct reference to the failure of the defendant to testify will almost invariably require reversal of the conviction.” *Id.* (citation modified).

In this case, as opposed to *Rice*, it is fairly clear that the prosecutor’s question was not a direct reference to McCarthy’s decision not to testify. As counsel for the State explained, he was questioning why *the expert* did not interview or examine McCarthy before arriving at his opinions as to his legal process, thereby impeaching the expert’s opinion. This context is important. After the objection, counsel for the State asked Neuroradiologist again about why he did not interview McCarthy:

Q: And do you not think what the defendant tells you about why and how he committed a crime might be significant?

A: I think that information is rarely available.

Q: Rarely available?

A: Well, somebody, it's been my experience, I mean, I think of—you know, it's—again, I'm not an attorney and I don't want to overstep, but, you know, it's the right of the defendant on whether they want to make a statement or not or whether they want to testify or not. So my understanding is that that is their right.

Q: Doctor, you were hired to render an expert opinion about his---I'll paraphrase—thought process. And, again, as part of that, did you say to the people who hired you, I want to sit down with your client and talk to him about that night to see the level of impact these issues actually had on his thought process? Did you do that?

A: No, I would say that in all criminal cases I've been involved with, none of the experts do that on either side.

On redirect examination, defense counsel attempted to clarify that it was less important for the expert to speak with the defendant because he was a Neuroradiologist, but Neuroradiologist doubled down, “I mean, I have even see[n] it where the psychiatrists don't. I mean, again, I think it sort of depends. There are instances where some of that may be discussed and there are some instances where it's not.” Then counsel for the State was then able to re-cross-examine him with two different psychiatrists whom McCarthy hired who did extensively question him about the events surrounding the shooting.

In context, we find that the question was not a direct reference to McCarthy's decision not to testify at his trial. Moreover, the trial court *sustained* the objection and directed the jury to disregard the question. As stated above, a mistrial is a drastic remedy and is not required for all improper questions or comments. In *State v. Kempker*, 824 S.W.2d 909, 911 (Mo. banc 1992), the Supreme Court of Missouri found that even a

direct reference to the defendant's refusal to testify did not necessarily entitle the defendant to a mistrial. It found that the trial court could have "consider[ed] the state of the evidence and the apparent effect on the jury and . . . conclude[d] that it would be sufficient to sustain the objection and then caution the jury if requested." *Id.* That is clearly the approach the trial court took here. We presume that the jury followed the trial court's instruction. *See State v. Foster*, 674 S.W.3d 119, 126 (Mo. App. E.D. 2023). We find no abuse of the trial court's broad discretion in fashioning this remedy.

Point I is denied.

Referral to the Defendant as the Expert's "Client"

McCarthy's second point on appeal is that the trial court abused its discretion by refusing to admonish the State's counsel for repeatedly referring to McCarthy as the Psychiatrist expert's "client."⁶ Like Neuroradiologist, Psychiatrist also testified it was his opinion that McCarthy lacked the capacity to deliberate or coolly reflect when he shot Victim. Psychiatrist admitted that he had not known, at the time he made his report, about McCarthy's statements to other people to the effect that he intended to shoot a police officer if pulled over, yet he did not change his report after having been made aware of these statements. And in response to questions about the witnesses' statements regarding McCarthy's plans to shoot a police officer, Psychiatrist pointed to inconsistencies in them, as if they were not credible. When cross-examined about

⁶ In the body of McCarthy's argument, he also claims that the trial court should have given the jury "a curative instruction," but this is not raised in his point on appeal, and so we do not consider it.

McCarthy's friend buying him the AR-15 two weeks after his last encounter with police, Psychiatrist acknowledged the timing, but stated he did not know when the friend actually turned the rifle over to McCarthy. When asked about McCarthy driving around with the gun in his vehicle, Psychiatrist answered that it was because McCarthy had seen other people driving around with those types of firearms in their vehicles. Psychiatrist testified that he believed McCarthy procured the firearm for target practice, but when challenged about why he drove around with it ready to fire, Psychiatrist answered, "I do not know what the practices are."

It is forty-five pages into the cross-examination before the State's counsel first refers to McCarthy as "your client." And that first time there was no objection by defense counsel; it was Psychiatrist who answered that McCarthy was not his "client". The same is true of the second such reference, and the State's counsel says, "I apologize, okay? He's the defendant, he's not your client. They're your client." It is after the third "your client" that defense counsel objects and states, "It's a cheap parlor trick to try to impugn the objectivity of the doctor by throwing out this 'he's your client.' And he knows that. It's not a misstatement; he does it all the time."

The trial court sustained the objection, and counsel for the State said, "Judge, if you'll notice for the record, there are times I catch myself mid-sentence, too." Shortly thereafter, the trial court told defense counsel not to make speaking objections. Finally, the trial court warned counsel for the State that if he referred to McCarthy as the expert witness's "client" again the court would stop any further cross-examination by the State. Shortly thereafter, Counsel for the State again made the reference and the trial court

ended the State's cross-examination. Counsel for the State said in response that "it's been a long day." Defense counsel responded, "Whose fault is that?" And counsel for the State answered, "Your witness's." Defense counsel decided to re-direct, and the trial court warned, "If you go to redirect, there's going to be a re-cross."

The re-direct examination asked Psychiatrist primarily about the credibility of the witnesses who had reported that McCarthy had been talking about possibly shooting a police officer to prevent going back to jail and suggested that J.S. and his family had motive to fabricate the statements because they had handled the rifle with which McCarthy shot Victim, and they feared their fingerprints would still be on the rifle. The re-direct concluded, "So when you take all these things that the [witnesses'] statements together, do they—even assuming they're true, do those—that information do anything to disprove [McCarthy's] mental illness?" Psychiatrist answered, "No, it does not."

The trial court asked counsel for the State how long he needed for re-cross, and the following exchange occurred:

State: Judge, to be honest, I had hoped to be done a long time ago. And the defense can blame me, but I think—well, I will let you decide for yourself, but I believe the doctor has extended this by the way and manner in which he has answered the questions and refusing to answer—

Court: The reason I ask, do we need to take a break?

State: We're going to be here a while if—Judge, we're going to be here a while

Court: Take a break.

However, not long into the re-cross examination, counsel for the State again referred to McCarthy as "your client." Defense counsel did not ask for an admonishment

of the State's counsel in front of the jury but asked for the trial court to "cease his re-cross" which the trial court did. This discussion followed:

State: And, Judge, maybe you disagree, but I am sincerely trying to follow those orders. It's been a long three weeks, we're here on a Saturday, it's late. I hope you would respect when I say I think we're all tired, and that the appropriate remedy at this point in time would be to recess [until] Monday or, again, admonish me and give me that one last warning, and that we can proceed at this time.

Court: I do want the record to reflect, [counsel], that your cross-examination started at 2:46. I placed no limits on your cross-examination. We took a break at 3:10. We came back at 3:30 and started back up with the cross-examination. I stopped your cross-examination at 5:10 in the afternoon because of the violation of my order. And we've been at this all afternoon. The cross-examination—the re-cross-examination is done.

McCarthy argues that the trial court erred by not giving counsel for the State a formal admonishment on the record in front of the jury. McCarthy, quoting *Berger v. United States*, 295 U.S. 78, 85 (1935), argues that a prosecutor engages in misconduct when the prosecutor's question or argument “contains improper insinuations and assertions calculated to mislead the jury.” As stated above, the trial court has broad discretion to fashion the appropriate remedy when it sustains an objection such as this. On re-cross-examination, the trial court granted the remedy McCarthy requested—it ended the examination. McCarthy cannot complain on appeal after having expressed apparent satisfaction with the action of the trial court. See *State v. Evenson*, 35 S.W.3d 486, 492 (Mo. App. S.D. 2000). In any event, it is unlikely that the "your-client" references confused or misled the jury. Psychiatrist consistently maintained that McCarthy was not his client, counsel for the State agreed, and the trial court affirmed this fact. The jury did learn, however, that McCarthy's counsel had hired Psychiatrist, and

that he was expecting to be compensated approximately \$32,000 for his time and testimony. We find no abuse of the trial court's discretion in determining that a formal admonishment of counsel for the State before the jury was necessary for the jury to accurately assess the expert's objectivity and credibility.

Point II is denied.

Closing Argument Remarks—Victim Trauma

McCarthy's third point on appeal is that the trial court plainly erred in failing to *sua sponte* interrupt the State's closing argument when the State's counsel (L.G.) opened its closing argument by stating:

We've heard a lot about trauma throughout this trial and the defendant has had a really traumatic childhood, traumatic experiences, no doubt. But his mother and father are not the ones on trial here today. He is, because he murdered [Victim]. So let's talk about trauma.

Officer [Victim], at the end of his shift just wants to get home to his family. Makes a simple traffic stop for someone who doesn't have their headlights on. And he gets shot; that's trauma. Officer [P.M.] desperately tries to save his coworker, his fellow officer, but he can see into the chest cavity of his coworker from the hole the defendant left with his rifle; that is trauma.

The Clinton Police Department, the Henry County Sherriff's Office, the Highway Patrol, all of these agencies swarm the area immediately. No idea where the defendant is lurking in the trees. Are they next? That, is trauma. Officer [P.M.], [the Police Chief], [Victim's] family at Golden Valley Hospital, saying their goodbyes to [Victim], that's trauma.

For two days the people of Henry County had to watch as agencies is [sic] flooded their home town, their neighborhoods, cops everywhere looking for this man, not knowing who is next, is he in their back yard ready to shoot someone else. That's trauma.

McCarthy acknowledges that, because he did not object to this argument at trial, it is not preserved for appeal, and we may, therefore, only review it for plain error at our

discretion. We decline to conduct plain error review. "The Supreme Court has instructed that relief should be granted on an assertion of plain error as to matters contained in closing argument only under extraordinary circumstances." *State v. Wallace*, 952 S.W.2d 395, 396 (Mo. App. W.D. 1997). This is because a failure to object to such remarks is often a matter of trial strategy, and "the trial court's options are narrowed to uninvited interference with summation and a corresponding increase of error by such intervention." *Id.* Even if McCarthy had objected, a mistrial would not likely have been appropriate, as the court could have fashioned a lesser remedy, such as instructing the jury to disregard the remarks. See e.g., *State v. Overton*, 261 S.W.3d 654, 665-66 (Mo. App. S.D. 2008); *State v. Edwards*, 116 S.W.3d 511, 536-37 (Mo. banc 2003) (comments about victim impact during guilt phase closing inappropriate but not plain error).

Point III is denied.

Prosecutorial Misconduct

McCarthy's fourth point on appeal is that the remarks during closing argument amounted to prosecutorial misconduct. McCarthy acknowledges that no objection was raised, and therefore this point is reviewable, if at all, only for plain error. However, McCarthy's point fails to allege trial court error. Rather, it alleges that "[t]he *prosecution* plainly erred when it engaged in misconduct" Rule 84.04(d)(A) requires that points relied on "[i]dentify *the trial court ruling or action* that the appellant challenges." (emphasis added). As such, McCarthy's fourth point is not cognizable on appeal. See *State v. Johnson*, 599 S.W.3d 222, 230 (Mo. App. W.D. 2020); *State v. Frazier*, WD86572, 2025 WL 2598758, at *4(September 9, 2025).

Conclusion

Finding no error, the judgment of the trial court is affirmed.

A handwritten signature in black ink, appearing to read 'G. D. Witt', is written over a horizontal line.

Gary D. Witt, Judge

All concur