STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0028

State of Minnesota,
Respondent,

vs.

Travis Clay Andersen,
Appellant.

Filed January 11, 2021
Affirmed
Bjorkman, Judge

Carver County District Court
File No. 10-CR-19-566

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

Mark Metz, Carver County Attorney, Angella Erickson, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his convictions of fifth-degree assault and obstructing legal process, arguing that the district court plainly erred by admitting: (1) a police officer's out-

of-court statement that appellant bites and spits and (2) two officers' testimony that appellant's conduct interfered with their work. He asserts numerous additional errors in a pro se supplemental brief. We affirm.

FACTS

During the afternoon of June 19, 2019, appellant Travis Andersen had two contacts with members of the Chaska Police Department. On both occasions, he was intoxicated and belligerent, but the police did not detain him. At approximately 10:30 that night, Andersen's mother called requesting officer assistance because Andersen was intoxicated in the street. Officer Hunter Panning responded, with assistance from Carver County Sheriff's deputies.

Officer Panning and Deputy Charles Possert arrived first. Officer Panning saw Andersen's mother in the street and walked toward her. Andersen approached him. The two spoke briefly, and Officer Panning noted that it was Andersen's third police contact that day. Deputy Possert then walked toward Andersen's mother, and Andersen pivoted toward him. As Andersen approached, Deputy Possert extended his arm toward Andersen; Andersen slapped it away. The deputy told Andersen he wanted to speak with his mother and instructed Andersen to talk to Officer Panning.

Officer Panning asked Andersen, "How can we solve this?" Andersen turned and responded, "Solve what?" He walked toward the officer with an aggressive stance and facial expression, ignoring requests to stop. Officer Panning believed Andersen intended to assault him and put out his arm to maintain distance. Andersen slapped it away and continued to advance. Deputy Brandon Johnson, who had just arrived at the scene,

observed this interaction and believed Andersen intended to assault Officer Panning. Deputy Johnson grabbed Andersen from behind and maneuvered him to the ground.

Andersen struggled. As the officers sought to restrain him, he made "mouth gestures" and "gnash[ed] his teeth" near Deputy Johnson's arm. Deputy Johnson told Andersen not to bite him, and Officer Panning stated that Andersen "bites and he spits." Once the officers restrained Andersen, he twice tried to grab Deputy Possert's hands, which the deputy believed was an attempt to break or otherwise harm his fingers. After Deputy Possert told him to stop, Andersen went limp, requiring the officers to lift and carry him to the squad car. As they secured him with a seat belt, he again attempted to bite Deputy Johnson.

A short while later, Officer Panning heard Andersen kicking the squad car door. When he opened it, he noticed that Andersen had unbuckled himself. The officers re-secured Andersen and closed the door. Before long, Andersen again kicked at the door. When Officer Panning opened the door, Andersen stuck his foot in the door, preventing the officer from closing it for approximately a minute.

Andersen was charged with three counts of felony fifth-degree assault and gross-misdemeanor obstructing legal process. On the day of trial, Andersen discharged his lawyer, refused to participate, and absented himself from the courtroom. The state proceeded with the trial, presenting footage of the incident from Officer Panning's body camera, and the testimony of the three officers. The jury found Andersen guilty, and the district court imposed concurrent 30-month prison sentences for the assault convictions. Andersen appeals.

DECISION

I. The district court did not plainly err by admitting the portion of the body-camera footage in which an officer states that Andersen bites and spits.

Where, as here, a defendant fails to object to the admission of evidence at trial, we review for plain error. *State v. Fraga*, 898 N.W.2d 263, 276-77 (Minn. 2017). To succeed on a claim of plain error, an appellant must establish (1) error, (2) that is plain, and (3) that affects his substantial rights. *Id.* at 277. An error is plain if it is "clear or obvious." *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016) (quotation omitted). And it prejudices the appellant's substantial rights if there is a "reasonable likelihood that it substantially affected the verdict." *Fraga*, 898 N.W.2d at 277. We will reverse based on prejudicial plain error if "reversal is necessary to ensure the fairness, integrity, or public reputation of judicial proceedings." *State v. Winbush*, 912 N.W.2d 678, 682 (Minn. App. 2018) (quotation omitted), *review denied* (Minn. May 29, 2018).

Andersen argues that the district court committed plain error by admitting Officer Panning's statement that Andersen bites and spits because the statement was inadmissible hearsay.[1] This argument is unavailing for two reasons.

First, Andersen cannot establish plain error because the statement was not clearly and obviously hearsay. Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). An out-of-court statement offered

[1] We observe that Andersen cites caselaw regarding the prejudicial impact of other-acts evidence. But his argument as to error focuses exclusively on hearsay. Because he presents neither argument nor authority regarding admission of other-acts evidence, he has forfeited any such claim of error. *State v. German*, 929 N.W.2d 466, 477 (Minn. App. 2019).

for another purpose is not hearsay. *State v. Moua*, 678 N.W.2d 29, 37 (Minn. 2004). The state contends Officer Panning's statement was offered "to show Deputy Johnson's state of mind and subsequent actions he took with regards to [Andersen]." An out-of-court statement offered to show the listener's "probable state of mind and good faith subsequent conduct" is not hearsay. *State v. Litzau*, 650 N.W.2d 177, 182 n.3 (Minn. 2002). And appellate courts are reluctant to find clear error where, as here, the defendant's failure to object prevented the state from explaining why the statement is not hearsay or falls within a hearsay exception. *See State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006) (stating that "[t]he complexity and subtlety of the operation of the hearsay rule and its exceptions make it particularly important that a full discussion of admissibility be conducted at trial"). On this record, the challenged statement was not clearly or obviously inadmissible hearsay, and its admission was not plain error.

Second, Andersen has not demonstrated any prejudice from the admission of the isolated statement that he bites and spits. It was the only such evidence presented at trial, and it was almost certainly overshadowed by the ample evidence that Andersen actually tried multiple times to bite Deputy Johnson. And the record reveals that the statement played no role in the state's case, which likewise focused on Andersen's actual conduct.

In sum, Andersen has demonstrated neither plain error nor resulting prejudice. Accordingly, he is not entitled to relief based on the admission of Officer Panning's statement.

II. The district court did not plainly err by admitting the officers' testimony that they believed Andersen interfered with their ability to perform their duties.

At the end of Officer Panning's and Deputy Possert's testimony, the prosecutor asked each whether he believed that Andersen's actions "interfered with [his] ability to perform [his] duties." Both responded in the affirmative. Andersen now argues for the first time that the district court plainly erred by admitting this testimony because it "impermissibly interfered with the jury's determination of whether [he] obstructed legal process." We disagree.

Both expert and lay witnesses may offer opinion or inference testimony if it is helpful to the fact-finder. Minn. R. Evid. 701, 702. "A lay witness's opinion or inference testimony may help the jury by illustrating the witness's perception in a way that the mere recitation of objective observations cannot." *State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010). Such testimony is "not objectionable" simply because it "embraces an ultimate issue to be decided by the trier of fact." Minn. R. Evid. 704. A district court may exclude ultimate-issue testimony if it "embraces legal conclusions or terms of art" or "merely tell[s] the jury what result to reach." *State v. Moore*, 699 N.W.2d 733, 740 (Minn. 2005) (quotations omitted). This limitation applies equally to expert witnesses, *id.*, and lay witnesses, *State v. Patzold*, 917 N.W.2d 798, 808 (Minn. App. 2018), *review denied* (Minn. Nov. 27, 2018). But the concern that ultimate-issue testimony will "unduly influence" the jury is most acute when it comes from an expert. *See Moore*, 699 N.W.2d at 739. A police officer may offer lay opinions that avoid legal terminology and reflect his own observations. *E.g.*, *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990) (officer testified

that he believed defendant killed the victim but avoided legal term "murder"); *Patzold*, 917 N.W.2d at 808 (officers testified based on their "own perceptions" that they believed assault occurred). Such was the case here.

A person obstructs legal process when he intentionally "obstructs, resists, or interferes with a peace officer while the officer is engaged in the performance of official duties." Minn. Stat. § 609.50, subd. 1(2) (2018). The officers' testimony that they believed Andersen's conduct "interfered with [their] ability to perform [their] legal duties" plainly addresses elements of the offense. But we are not persuaded that this testimony usurped the jury's role as fact-finder. The officers described their own experience with Andersen and how his conduct affected their work. This testimony merely explained the officers' "own perceptions" of the incident, as in *Patzold*, 917 N.W.2d at 808. It did not have the imprimatur of an expert or purport to decide the case for the jury. *Cf. Moore*, 699 N.W.2d at 739-40 (concluding expert's testimony that tooth loss was great bodily harm told the jury what result to reach). We discern no plain error by the district court in admitting the testimony.

Moreover, to the extent the testimony infringed on the province of the jury, it caused Andersen no prejudice. The jury saw the footage of Andersen physically confronting, threatening, and undermining the officers as they attempted to investigate his mother's report and contain Andersen's increasing aggression. Given the overwhelming evidence that Andersen interfered with the officers' performance of their duties, we are satisfied that the officers' testimony to that effect did not impact Andersen's substantial rights.

III. Andersen's pro se arguments do not entitle him to relief.

Andersen asserts additional concerns in a pro se supplemental brief. After careful review of his brief, we discern several issues within the scope of this appeal[2] but conclude that none establishes a basis for reversal.

First, Andersen appears to argue that his $500,000 bail was disproportionate to his charges. Bail issues are generally moot after the defendant is convicted. *State v. LeDoux*, 770 N.W.2d 504, 515 (Minn. 2009). Moreover, the pending charges are only one factor district courts consider in setting bail; courts also consider the defendant's criminal history to assess his public-safety risk. Minn. R. Crim. P. 6.02, subds. 1, 2; *see State v. McMains*, 634 N.W.2d 733, 734 (Minn. App. 2001) (stating that a court may consider public safety in setting amount of bail). Here, the pretrial release evaluation assigned Andersen a risk score of 96, primarily because of his extensive violent criminal history. That score is well above the 26-point threshold at which defendants are considered "higher" risk. We see no error by the district court in setting Andersen's bail.

Second, Andersen seems to challenge the district court's probable-cause assessment.[3] He moved to dismiss for lack of probable cause, arguing (1) he was too

[2] Some of Andersen's concerns look to matters outside the record, such as his treatment in custody, which are not before us in this appeal from the judgment of conviction. *See* Minn. R. Civ. App. P. 110.01 (defining record on appeal); Minn. R. Crim. P. 28.02, subd. 2 (defining scope of appeal from conviction or sentence).

[3] On review of a conviction, the issue of probable cause is irrelevant because "[t]he standard for the sufficiency of the evidence to support a conviction is much higher than probable cause." *State v. Holmberg*, 527 N.W.2d 100, 103 (Minn. App. 1995), *review denied* (Minn. Mar. 21, 1995).

intoxicated to form the requisite intent, (2) he did not cause the officers fear of or actual bodily harm, and (3) he should have been charged under the more specific fourth-degree-assault statute (assault of peace officer). After carefully weighing these arguments, the district court appropriately rejected the first two as presenting disputed fact issues for trial. *See State v. Lopez*, 778 N.W.2d 700, 704 (Minn. 2010) (stating that motion to dismiss for lack of probable cause should be denied when evidence, if proved at trial, would preclude judgment of acquittal); *State v. Torres*, 632 N.W.2d 609, 617 (Minn. 2001) (explaining that consuming intoxicants does not prove intoxication and intoxication does not prove lack of intent). And it properly rejected the third because the legislature has not clearly required that all assaults against peace officers be charged as fourth-degree offenses, particularly when circumstances justify charging a felony fifth-degree assault. *State v. Love*, 350 N.W.2d 359, 362 (Minn. 1984) (recognizing prosecutorial discretion in determining which offenses to charge, including an assessment of sentencing options).

Third, Andersen questions the sufficiency of the evidence supporting his convictions. When reviewing a claim of insufficient evidence, we assume the jury believed the state's evidence. *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020). Where, as here, a conviction rests on circumstantial evidence, we first identify what circumstances the state proved, and will affirm so long as the only reasonable inference from those circumstances is that the defendant is guilty. *Id.* The state proved that: Andersen's mother requested officer assistance because he was intoxicated in the street; when the officers responded, he aggressively confronted them and ignored demands; he slapped two of them, causing a "stinging" sensation; he made biting "mouth gestures" at them and grabbed at

their hands; he went limp, requiring the officers to carry him to the squad car; and he stuck his foot in the squad door, preventing the officers from closing it. The only reasonable inference from these circumstances is that Andersen obstructed the officers while they were performing official duties, Minn. Stat. § 609.50, subd. 1(2), and he either intentionally caused them fear of bodily harm or caused them bodily harm, Minn. Stat. § 609.224, subd. 1 (2018). The state also proved that Andersen has two qualifying prior convictions that justified treating the assaults as felonies. Minn. Stat. §§ 609.02, subd. 16, .224, subd. 4(b) (2018).

Finally, Andersen appears to challenge his sentence. We discern no sentencing error. His 30-month prison sentence for the assaults is within the presumptive range for those level-4 offenses and his criminal-history score of 7. Minn. Sent. Guidelines 4.A, 5.A (2018).

Affirmed.