STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0259

State of Minnesota,
Respondent,

vs.

Heidi Halvorson Rivers,
Appellant.

Filed January 11, 2021
Affirmed
Frisch, Judge

Kandiyohi County District Court
File No. 34-CR-18-904

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

Shane D. Baker, Kandiyohi County Attorney, Aaron P. Welch, Assistant County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

In this direct appeal from a conviction for fifth-degree possession of a controlled substance, appellant argues that the prosecutor committed misconduct by eliciting

testimony from the arresting police officer that he knew appellant from her prior contacts with law enforcement. We affirm.

FACTS

In the early morning of September 20, 2018, appellant Heidi Halvorson Rivers and a companion were in a parked car in a secluded parking lot. Rivers was in the backseat while her companion was in the front passenger seat. A police officer on routine patrol spotted the car and became suspicious because the lot was commonly empty at night, and on prior occasions he had discovered active drug use in cars parked in the lot at night. The officer approached the car and identified both Rivers and her companion from several prior contacts. The officer observed a small digital scale in the front cup holder with a white residue he suspected was methamphetamine. The officer retrieved his K-9 partner Axel from the squad car, and Axel alerted to the smell of drugs at the driver's side door.

The officer then asked Rivers and her companion to exit the car. Before exiting the car, Rivers asked the officer if she could retrieve something from her purse, which was positioned in the driver's seat. Rivers then searched through her purse before exiting the vehicle. Thereafter, the officer searched the vehicle and again observed the digital scale in the cup holder. The officer also found a mint container and a butane torch in Rivers's purse, which was still positioned in the driver's seat. The officer discovered a white substance in the mint container. The residue on both the scale and in the mint container field tested positive for methamphetamine, and a later laboratory test confirmed the test result as to the drug residue in the mint container.

The state charged Rivers with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2018). During a jury trial, the prosecutor asked the officer how he identified Rivers, prompting him to respond, "I . . . knew her from several prior contacts. She also gave me her full name and date of birth." After hearing the state's evidence, the jury found Rivers guilty as charged. This appeal follows.

DECISION

Rivers seeks reversal of her conviction and a new trial, arguing that the prosecutor committed misconduct when she elicited testimony from the officer during direct examination that he identified Rivers from "several prior contacts."

Rivers did not object at trial, so we review the alleged misconduct by applying a modified plain-error test. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The defendant bears the initial burden of "demonstrat[ing] both that error occurred and that the error was plain." *Id.* If the defendant demonstrates that plain error occurred, then the burden shifts to the state to prove that the misconduct did not affect the defendant's substantial rights. *Id.* "[I]f the [s]tate meets its burden, we need not decide whether the prosecutor committed an error that was plain." *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017).

Because we conclude that any error did not affect Rivers's substantial rights, we need not decide whether plain error occurred. An error affects a defendant's substantial rights when "there is a reasonable likelihood that the error substantially affected the verdict." *State v. Brown*, 792 N.W.2d 815, 824 (Minn. 2011) (quotation omitted). In making this assessment, we consider "the strength of the evidence against the defendant,

the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007).

Here, the evidence against Rivers was strong and the answer indicating that the officer identified Rivers from several prior contacts was isolated and not repeated. The state presented evidence that the officer discovered Rivers in the vehicle; that a digital scale with white residue was in the cup holder next to the driver's seat; that before exiting the vehicle, Rivers asked to retrieve something from her purse; that Rivers reached into her purse before exiting the vehicle; and that the officer discovered the mint container with methamphetamine residue and a butane torch in Rivers's purse. At trial, the parties' arguments focused on whether Rivers or her companion possessed the mint container. Under these circumstances, we conclude that there is no reasonable likelihood that any error associated with the single, isolated question regarding the officer's prior contacts with Rivers substantially affected the verdict.

Affirmed.