STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0665
A24-0666

State of Minnesota,
Respondent,

vs.

Alicia Marie Neely,
Appellant.

Filed April 14, 2025
Affirmed
Wheelock, Judge

Freeborn County District Court
File Nos. 24-CR-23-98, 24-CR-23-103

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

David Walker, Freeborn County Attorney, Albert Lea, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this consolidated appeal, appellant challenges her conviction following a jury trial for the first-degree sale of a controlled substance and her sentencing for both the jury-trial

conviction and her conviction following her guilty plea to a different first-degree sale of a controlled substance, arguing that the admission of a law-enforcement officer's testimony regarding prior encounters with appellant was prejudicial plain error and that the district court abused its discretion when it denied appellant's downward dispositional departure motion. Because the officer's testimony did not affect appellant's substantial rights and the district court did not abuse its discretion in denying her departure motion, we affirm.

FACTS

Appellant Alicia Marie Neely sold approximately 20 grams of methamphetamine to a confidential informant during a controlled purchase that occurred at Neely's residence in Albert Lea in December 2021. In advance of the controlled purchase, law enforcement had outfitted the confidential informant with a special cell phone that recorded audio and video footage so the informant could document the purchase.

The confidential informant took the cell phone out of his pocket only a few times during the controlled purchase, but the cell phone's microphone captured the full conversation between Neely and the informant. Before arresting Neely, law enforcement conducted an additional controlled purchase of methamphetamine from her in November 2022. Respondent State of Minnesota charged Neely with two counts of first-degree sale of a controlled substance for the December 2021 and November 2022 sales of methamphetamine.

The matter proceeded to a jury trial on the charge arising from the December 2021 sale.[1] At that trial, the state presented testimony from three law-enforcement officers, a forensic scientist from the Minnesota Bureau of Criminal Apprehension (BCA), and the confidential informant from the December 2021 controlled purchase. The jury heard the audio recording captured by the cell phone that the confidential informant used to document the purchase. The jury also received a still-shot photo of Neely holding a bag of methamphetamine from the video that the cell phone had recorded. Her face was not clearly visible in the photo.

The confidential informant testified that he knew Neely prior to the controlled purchase, and he identified her in the courtroom. Both the confidential informant and law enforcement testified that the controlled purchase occurred at Neely's residence. A BCA forensic scientist testified that the substance Neely sold the confidential informant was methamphetamine.

The law-enforcement officer who set up the controlled purchase testified at trial. When describing a conversation with the confidential informant in which the informant offered to conduct a controlled purchase of methamphetamine from Neely, the officer said, "I've heard [Neely's] name for a long time. I've heard it through a lot of my cases. And if [this confidential informant] could [execute a controlled purchase from Neely], that would be great." In response to a question about whether he knew Neely from personal

[1] After trial and sentencing on the December 2021 offense, Neely entered a guilty plea for the November 2022 offense. In this consolidated appeal, she challenges her conviction from the jury trial and the district court's denial of her downward dispositional departure motion for the sentencing of both convictions.

experience, the officer testified that he had "known her for—since she was a waitress at Perkins when she was in high school." He also testified that he was "a hundred percent" confident he could identify Neely by her voice and, later, that he could recognize her voice from "multiple contacts and a lot of voice recordings." In response to a question about whether the officer recognized a photograph from the Minnesota Department of Public Safety, Driver and Vehicle Services (DVS) website used to identify Neely in this case, he testified that he had seen the photograph "hundreds of times."

Neely chose not to testify, and she did not call any witnesses. During closing argument, Neely argued that the state failed to prove that she was the person who sold the confidential informant methamphetamine in the December 2021 controlled purchase.

The jury found Neely guilty of first-degree sale of methamphetamine in violation of Minn. Stat. § 152.021, subd. 1(1) (2020), and she subsequently pleaded guilty to the charge of first-degree sale of methamphetamine associated with the November 2022 controlled purchase.

Prior to sentencing for both convictions, Neely moved for a downward dispositional departure. Neely argued that she was particularly amenable to probation because she had completed a short-term treatment program and, at the time of filing, she was participating in a long-term treatment program. In support of her motion, Neely submitted letters from her sister, treatment care manager, and two community members. The district court denied Neely's downward dispositional departure motion, sentencing her to concurrent terms of imprisonment for the convictions.

Neely appeals.

DECISION

I. The officer's testimony about recognizing Neely from prior contacts did not affect her substantial rights.

Neely argues that the officer's testimony about having prior contacts with her was plain error that prejudiced her right to a fair trial. The state argues that Neely cannot meet her burden of establishing that the officer's testimony was plain error or, if it was error, that it affected her substantial rights. During trial, Neely did not object to, and the district court did not address sua sponte, the challenged testimony.

We review unobjected-to errors for plain error. Minn. R. Crim. P. 31.02; *State v. Kuhlmann*, 806 N.W.2d 844, 852 (Minn. 2011). When conducting a plain-error review, we must "determine whether there was [1] error, [2] that was plain, and [3] that affected the defendant's substantial rights." *Kuhlmann*, 806 N.W.2d at 852. "An error is 'plain' when it is clear or obvious." *Id.* at 853. If the plain error affected the outcome of the case, then it affected the defendant's substantial rights. *See id.* at 852-53. "Under the plain error rule, if [an appellate court] find[s] that any one of the requirements is not satisfied, [it] need not address any of the others." *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted). If the appellant shows that all three prongs of plain-error review are met, appellate courts next consider whether reversal is required to ensure "the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quotation omitted).

Generally, evidence of a person's character is not admissible to show "action in conformity therewith," Minn. R. Evid. 404(a), and "[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity

therewith," Minn. R. Evid. 404(b)(1). On appeal, Neely claims that three statements the officer made during his direct examination improperly related to her character or prior bad acts and thus constituted plain error.

The first statement Neely identifies as plain error occurred when the officer explained how the confidential informant offered to help law enforcement by executing a controlled purchase of methamphetamine from her. The prosecutor asked the officer, "What happened?" The officer responded that he had been hearing Neely's "name for a long time . . . through a lot of [his] cases. And if [the confidential informant] could [execute a controlled purchase from Neely], that would be great." The second statement Neely identifies as plain error occurred when the prosecutor asked the officer the following question: "When you listened to the recording and when you were in active surveillance at the time using your phone, what voices did you hear? Whose voices did you hear in that recording?" The officer answered that he heard "[a] female, which is a voice that [he] recognized from multiple contacts and a lot of voice recordings, as Alicia Neely."[2] The third statement Neely identifies as plain error occurred when the prosecutor asked whether the officer was confident that he could recognize Neely by her DVS photograph. The prosecutor asked the officer if he had seen Neely's DVS photograph recently. The officer answered that he had seen the photograph "hundreds of times."

We assume without deciding that the district court's admission of the statements made during the officer's testimony was plain error and proceed to analyze whether the

[2] We present the statements in the order in which Neely presented them in her brief. However, the "second statement" occurred after the "third statement" during trial.

statements affected Neely's substantial rights. Appellate courts "generally will not reverse a verdict even when improper evidence is presented to the jury unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotations omitted).[3] The supreme court recently clarified that appellate courts consider the entire record and identified a list of nonexclusive factors that appellate courts may apply when determining whether there is a reasonable possibility that the erroneously admitted evidence significantly affected the verdict:

> (1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.

Bigbear, 10 N.W.3d at 54 (quotation omitted).

As to the first factor—the manner in which the party presented the evidence—the officer's statements were made in response to the prosecutor's open-ended direct-examination questions. It does not appear that the state intentionally elicited any of the challenged statements. Therefore, the first factor does not weigh in favor of concluding that the officer's statements affected the jury's verdict.

[3] The supreme court in *Bigbear* applied a "harmless error" analysis. *Id.* "[T]he third prong of the plain error standard is the equivalent of a harmless error analysis." *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). In other words, "[t]he 'affects substantial rights' language of the third plain error factor is the same language used to define harmless error." *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007) (citing Minn. R. Crim. P. 31.01).

As to the second factor—whether the evidence was highly persuasive—the officer's statements were potentially persuasive, but likely not highly persuasive. The officer's statements about having "heard [Neely's name] through a lot of [his] cases," knowing her DVS photograph because he has seen it "hundreds of times," and being able to identify Neely by her voice because he has heard "a lot of voice recordings" may have been unfavorable for Neely. However, the relevant portion of his testimony was his identification of the woman in the audio recording as Neely—not his prior involvement with Neely.

When reviewing the persuasiveness of the evidence that Neely challenges, we also consider the strength of the evidence in the state's case, particularly because "strong evidence of guilt undermines the persuasive value of wrongly admitted evidence." *Id.* (quotation omitted). Here, the state provided strong evidence, which Neely does not challenge, that supported the officer's testimony that it was Neely who sold the controlled substances. Both the officer and the informant corroborated that Neely lived at the address where the December 2021 controlled purchase occurred. And the informant identified Neely in the courtroom and testified that she was the person who sold him methamphetamine in December 2021. The evidence presented at trial thus weighed heavily in favor of convicting Neely, and any persuasive effect of the challenged statements could not reasonably have outweighed the evidence supporting the jury's verdict. Because the state presented strong evidence to support the jury's guilty verdict, the second factor does not weigh in favor of concluding that the officer's statements affected the jury's verdict.

As to the third factor—whether the party who offered the evidence used it in closing argument—the prosecutor discussed the officer's familiarity with Neely's voice during closing argument but did not mention his testimony about having known her from prior interactions with law enforcement. Specifically, the prosecutor said:

> [The officer] testified regarding Alicia Neely. He has known her for a long time. He has heard her. He knows her voice. He heard her voice and identified her voice on that recording. And I said, "Well, how sure are you of that?" He said he's a hundred percent confident on that. He knows her voice. So he's not guessing about the voice there. He knows that, and he can identify her voice in that—in the video itself.

In considering how the officer's knowledge of Neely was referenced in the closing argument, we observe that the officer also testified that he had known Neely since she was a waitress at a local restaurant in high school. Furthermore, while the argument focused on the officer's knowledge of Neely that enabled him to identify her voice, the prosecutor did not reference the challenged statements. Because the prosecutor did not use those statements during closing argument, the third factor does not weigh in favor of concluding that the officer's statements affected the jury's verdict.

As to the fourth factor—whether the defense effectively countered the evidence—although Neely cross-examined the officer and addressed his testimony in closing argument, she did not attempt to directly counter any potential negative inferences that the jury may have drawn specifically from the challenged statements. Because Neely did not counter the evidence with which she takes issue on appeal, the fourth factor weighs in favor of determining that the officer's statements affected the jury's verdict.

Because only one of the factors weighs in favor of determining that the officer's testimony affected Neely's substantial rights, we conclude that the statements did not affect Neely's substantial rights. And because admitting the challenged statements did not affect Neely's substantial rights, a new trial is not necessary. *Lilienthal*, 889 N.W.2d at 785.

II. The district court did not abuse its discretion when it denied Neely's motion for a dispositional departure.

Neely claims that, because evidence in the record demonstrated that she is particularly amenable to probation, the district court abused its discretion when it denied her motion for a downward dispositional departure. We disagree.

The Minnesota Sentencing Guidelines require a district court to impose a defendant's presumptive sentence "unless there exist identifiable, substantial, and compelling circumstances to support a departure" from that presumptive sentence. Minn. Sent'g Guidelines 2.D.1 (Supp. 2021). "Because the guidelines' goal is to create uniformity in sentencing, departures are justified only in exceptional cases." *State v. Solberg*, 882 N.W.2d 618, 625 (Minn. 2016). District courts have broad discretion to determine whether a departure from the sentencing guidelines is appropriate, and appellate courts "generally will not interfere with the exercise of that discretion." *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). "[A]s long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination," we will not disturb the district court's decision to deny a departure motion. *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). "Only the rare case will merit reversal based

on the district court's refusal to depart." *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013).

Neely contends that the district court abused its discretion in denying her motion because she had completed treatment, her family and community agreed that she is amenable to probation, her defense counsel noted that she exhibited positive behavior throughout these proceedings, and she previously had only a gross misdemeanor on her record. The district court considered Neely's arguments during her sentencing hearing and commended her on the progress she had made. Yet, it determined that the severity of her offenses outweighed any potential amenability to probation that she may have demonstrated. Consequently, the district court denied Neely's motion and sentenced her to the presumptive disposition under the Minnesota Sentencing Guidelines. Because the district court considered Neely's arguments but was not persuaded that substantial and compelling reasons supported a departure, we cannot conclude that the district court abused its discretion when it denied her downward dispositional departure motion.

Affirmed.