

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0935**

State of Minnesota,
Respondent,

vs.

Brandon Lee Jones, Sr.,
Appellant.

**Filed April 21, 2025
Affirmed
Worke, Judge**

Redwood County District Court
File No. 64-CR-23-342

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

Shannon Ness, Redwood County Attorney, Redwood Falls, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Wheelock, Judge; and Jesson,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his conviction of third-degree controlled-substance sale, arguing that (1) the district court abused its discretion by admitting evidence of appellant's prior controlled-substance-sale conviction, an implied threat by appellant, and a surveillance video; (2) the prosecutor committed misconduct in closing and rebuttal arguments; and (3) the district court violated his due-process rights by limiting his cross-examination of a state's witness. We affirm.

FACTS

In 2022, a confidential informant (CI) was working under contract with a drug task force made up of law enforcement from four counties in southwestern Minnesota.

On August 16, 2022, the CI arranged a controlled buy with appellant Brandon Lee Jones, Sr. The CI had known Jones for approximately four or five years. The CI and Jones communicated through Facebook messenger and agreed to meet at a casino to exchange one gram of fentanyl for \$150. Task force agents outfitted the CI with a recording device and transported her to the casino.

While the CI waited for Jones outside of the casino, a woman approached the CI and stated that she was there for Jones. The two women entered Jones's vehicle. The CI asked the woman if she had "it." The woman handed the CI a piece of paper with fentanyl wrapped inside, and the CI handed the woman the cash. The CI returned to the agents' vehicle and turned over the fentanyl.

In May 2023, respondent State of Minnesota charged Jones with third-degree controlled-substance sale, in violation of Minn. Stat. § 152.023, subd. 1(1) (2022).

At Jones's jury trial, the CI and task force agents testified about the controlled buy. Additional evidence included, among other things, Facebook messages between the CI and Jones to arrange the controlled buy, an audio recording of the controlled buy, photographs of Jones at the casino, casino surveillance videos, and evidence of Jones's prior controlled-substance-sale conviction.

The jury found Jones guilty of third-degree controlled-substance sale. The district court sentenced Jones to the presumptive sentence of 45 months in prison. This appeal followed.

DECISION

Evidentiary rulings

Jones first challenges the district court's evidentiary rulings. This court reviews the district court's evidentiary rulings for an abuse of discretion. *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020).

Evidence of prior controlled-substance conviction

Jones argues that the district court abused its discretion by admitting his prior controlled-substance-sale conviction. He contends that the jury likely relied on the evidence to find that he has a propensity to sell drugs and is therefore guilty of the charged offense.

Other-crime evidence is inadmissible "to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b); *State v. Spreigl*, 139 N.W.2d

167, 173 (Minn. 1965). But *Spreigl* evidence may be admissible to show “motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b). Before a district court may admit *Spreigl* evidence

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state’s case; and
- (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 686 (Minn. 2006).

Here, prior to trial, the state moved to admit evidence of Jones’s 2016 drug-sale conviction to show Jones’s knowledge of drugs and drug sales. The district court granted the state’s request, determining that the prior-sale conviction was sufficiently similar to the charged offense because both involved a controlled buy, a small amount of a controlled substance, and occurred in the same community.

After an agent testified that Jones was previously convicted of selling heroin on the Lower Sioux Indian Reservation, the district court immediately instructed the jury:

[T]he conduct in 2016 is . . . being offered for the limited purpose of assisting you in determining whether the [d]efendant committed the acts with which he is charged in this complaint. It’s not to be used to prove character or that the [d]efendant acted in conformity with such character. He’s not being tried for . . . that offense, [and] cannot be convicted in this matter based on information regarding that other offense. You are not to convict . . . on the basis of any conduct in 2016. To do so . . . might result in unjust double punishment.

Jones argues that the evidence was irrelevant to knowledge because knowledge of controlled substances was not in dispute in this matter, and it was irrelevant to show motive,

opportunity, and common scheme. Jones also argues that the evidence was prejudicial because it is “propensity evidence.”

We conclude that the district court did not abuse its discretion by admitting the evidence. The evidence showed Jones’s knowledge, it showed a plan, and it was relevant to identity. Further, the evidence was not outweighed by its potential prejudice because there is not a “reasonable possibility that the . . . evidence significantly affected the verdict.” *See Smith*, 940 N.W.2d at 505. The evidence of Jones’s guilt was overwhelming, and the district court instructed the jury on how to appropriately use the evidence. *See State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009) (stating reviewing courts assume jury followed district court’s instructions). The district court did not abuse its discretion by admitting the *Spreigl* evidence.

Evidence of implied threat

Jones next argues that the district court abused its discretion by admitting evidence of an implied threat posted on his social media because it was not specifically directed at the CI and the CI did not feel threatened because she testified against him.

Evidence of a threat may be relevant to witness credibility and to explain inconsistencies in a witness’s testimony. *State v. McArthur*, 730 N.W.2d 44, 52 (Minn. 2007). And it may also be admissible to show the defendant’s “consciousness of guilt.” *State v. Maye*, 6 N.W.3d 103, 109 (Minn. 2024). To be admitted to show consciousness of guilt, there must be “a direct link” between the defendant and the threat. *Holt v. State*, 772 N.W.2d 470, 482 (Minn. 2009).

Here, the state sought to admit two exhibits—a video and a photograph with superimposed text—depicting a post on one of Jones’s social-media accounts. In the post, as Jones was being booked for the controlled-buy offense, he stated, “[w]hoever set me up I’m giving u one chance to not show up for court. If u show up wen I take it to trial u Kno the rest.” The district court permitted the state to use only one of the exhibits to show “consciousness of guilt and identity.” The district court also gave the jury a cautionary instruction. The CI testified that the post was from Jones’s account and that it caused her concern, but she still testified against Jones.

We conclude that there is a “direct link” between Jones and the threat to show consciousness of guilt. *See id.* Additionally, while Jones argues that the threat was not directed at the CI, the record shows that Jones blocked the CI on social media after the controlled buy, demonstrating his attempt to distance himself from the CI and the controlled buy. The district court did not abuse its discretion by admitting the threat evidence.

Surveillance video

Jones lastly argues that the district court abused its discretion by admitting video surveillance of the casino parking lot because the state’s disclosure of the evidence was untimely.

The state has a continuing duty to disclose evidence to the defense. Minn. R. Crim. P. 9.03, subd. 2(c). Whether a discovery violation occurred is a question of law reviewed *de novo*. *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005). But whether and which sanctions to impose for a discovery violation is within a district court’s discretion. *State v.*

Lindsey, 284 N.W.2d 368, 373 (Minn. 1979) (stating that appellate courts review sanctions for an abuse of discretion). Generally, unless the defendant establishes prejudice, a discovery violation will not result in the granting of a new trial. *Palubicki*, 700 N.W.2d at 489.

Here, the surveillance video shows Jones walking out of the casino and driving away in his vehicle, which is the vehicle in which the controlled buy occurred. The state asserted that it disclosed the evidence when it became aware of it—just days before trial. Jones moved to exclude the evidence, claiming that it was untimely and prejudicial because the state did not have other evidence of Jones driving the vehicle. The district court noted that the evidence was not actually “new evidence” because other photographic evidence placed Jones at the casino and in the immediate vicinity of the vehicle. The district court admitted the surveillance video to show Jones’s presence at the casino.

We conclude that there was not a discovery violation, and the district court did not abuse its discretion by admitting the surveillance video. The video is short, and Jones would have had enough time to review the video and decide how to use or counter it. Moreover, photographic evidence already placed Jones at the casino and near the vehicle. Thus, even if the district court wrongfully admitted the evidence, any error was harmless because it is not reasonably likely that it significantly affected the verdict. *See Smith*, 940 N.W.2d at 505.

Prosecutorial misconduct

Jones next argues that the prosecutor committed misconduct in closing and rebuttal arguments by ignoring the district court’s rulings on the limited use of certain evidence and

encouraging the jury to use the evidence for a prohibited reason. Jones did not object to the prosecutor's arguments at trial. Without an objection, this court applies the modified plain-error test to review Jones's prosecutorial-misconduct claims. *See State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006).

Under this modified plain-error review, Jones carries the first burden to demonstrate an error that was plain. *See id.* at 302. An error that was plain is "clear or obvious," meaning it "contravenes case law, a rule, or a standard of conduct." *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016) (quotations omitted).

If Jones successfully shows plain error, the burden shifts to the state to demonstrate that the error did not affect Jones's substantial rights. *See Ramey*, 721 N.W.2d at 302. "Prosecutorial misconduct affects substantial rights if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury's verdict." *State v. Davis*, 735 N.W.2d 674, 681-82 (Minn. 2007).

If the state fails to demonstrate that the error did not affect substantial rights, we assess "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Ramey*, 721 N.W.2d at 302. In considering "the fairness, integrity, or public reputation of judicial proceedings," the focus is not on whether the error harmed the defendant's particular case; rather, the focus is on whether there would be "wider ramifications affecting the public's trust in the fairness and integrity of our judicial system." *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023) (quotation omitted).

Jones argues that the prosecutor committed misconduct by violating the district court's specific rulings on how evidence was to be used. First, the district court admitted

the threat evidence to show consciousness of guilt. In rebuttal closing argument, the prosecutor stated:

Regarding the threat, . . . while you can only use this evidence for consciousness of guilt, this threat does not have to be directed at a specific person. . . . [I]f the [d]efendant didn't know who the CI was, that means that the [agents] and the CI did a real good job, . . . but I think it's something else. I think he knows exactly who the CI was. We know this how? Because the same day this sale took place, he deleted her off of Facebook. He knew exactly who this threat was going to, he knew it would get to her. He knew how involved she is in this community, that she is in . . . this drug world [H]e knew exactly who this was going to get to. Yet she came and testified, and she testified credibly.

Jones argues that “[l]inking the threat to bolster the believability of the CI’s testimony was an improper purpose in violation of the [district] court’s ruling limiting the evidence’s relevance.” But Jones has not established plain error because the statement matches the evidence. The evidence showed that Jones blocked the CI after the controlled buy. The CI testified that she was concerned after learning of the threat. And the CI’s testimony was corroborated by other evidence—including photographs, recordings, and agents’ testimony. The prosecutor did not state anything outside of the evidence and the jury was free to draw inferences from the evidence.

Second, the district court admitted the casino surveillance video to show that Jones was at the casino. Jones argues that the prosecutor disregarded the district court’s ruling that limited the use of the evidence by repeatedly using the evidence to connect Jones to the woman who sold the fentanyl to the CI and to show that this woman was acting for Jones.

The surveillance footage showed Jones at the casino and getting into his vehicle. But there was stronger evidence connecting Jones to the woman who sold the fentanyl. The CI's testimony connected Jones to the woman. The controlled buy occurred in Jones's vehicle. And the woman had the amount of fentanyl that the CI requested from Jones and knew the amount of cash that she was supposed to collect in exchange for the fentanyl. Jones has therefore failed to establish plain error.

Cross-examination of CI

Finally, Jones argues that the district court violated his constitutional rights by limiting his cross-examination of the CI, which he claims prevented him from establishing bias.

“The constitutional right of confrontation guarantees only an opportunity for cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.” *State v. Evans*, 756 N.W.2d 854, 874 (Minn. 2008) (quotation omitted). A district court may reasonably limit cross-examination on issues that are “only marginally relevant.” *State v. Zielinski*, 10 N.W.3d 1, 15 (Minn. 2024) (quotation omitted). A district court does not violate a defendant's rights by limiting “cross-examination so long as the jury is presented with sufficient information from which to appropriately draw inferences as to the witness's reliability.” *Id.* (quotation omitted).

Here, prior to trial, the parties and district court discussed the CI. The prosecutor stated that the CI had been working under a contract that contemplated first- and second-degree controlled-substance cases. This case involved a third-degree charge, which was outside the contract. The CI worked this case for cash. The CI was ultimately terminated

from her contract in December 2022 for using drugs. The prosecutor stated that, because the CI did not receive a benefit of dismissal of charges for this case, the state did not plan to question the CI about the contract.

The district court determined that some questions about the contract were relevant because the CI was under contract at the time of the sale. But the district court prohibited questions about the CI's termination from the contract because the CI was terminated for drug use, which was not probative as to her credibility or truthfulness.

We conclude that the district court imposed reasonable limits on cross-examination of the CI. The CI testified that she received \$100 to do the controlled buy, so the jury was aware that she received a benefit and could use this evidence to evaluate her bias. The fact that the CI worked for the dismissal of charges in other matters was not relevant to this case. The district court's limitation on Jones's cross-examination of the CI did not violate Jones's constitutional rights.

Affirmed.