STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1046

State of Minnesota,
Respondent,

vs.

Danielle Marie Tarbuck,
Appellant.

Filed June 30, 2025
Affirmed
Reilly, Judge[*]

Itasca County District Court
File No. 31-CR-23-742

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Jacob P. Fauchald, Itasca County Attorney, Grand Rapids, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Reilly, Judge.

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

NONPRECEDENTIAL OPINION

REILLY, Judge

On appeal from a conviction of possession of burglary tools, appellant argues that she is entitled to a new trial because the district court (1) abused its discretion by admitting testimony from a store manager that appellant committed the charged offense; (2) plainly erred by allowing opinion testimony from the store manager describing surveillance video and photo exhibits; and (3) plainly erred by allowing testimony from an officer that appellant knew him from prior contacts. We affirm.

FACTS

In January 2023, appellant Danielle Marie Tarbuck was shopping at Dollar General. Dollar General sells discounted items for one cent, known as "penny items." As relevant here, at the time Tarbuck was shopping, Dollar General sold American Vegetable seed packets that were discounted to "penny items" because the seed packets were out of season.

After shopping, Tarbuck used the self-checkout to pay. Tarbuck requested assistance while checking out, and the store manager responded. While assisting Tarbuck, the store manager thought Tarbuck bought many "penny items." The store manager saw several "penny items" rung up on the register and also noticed items in plastic shopping bags in Tarbuck's cart that were not "penny items". Because the store manager did not see the "penny items" in Tarbuck's cart, the store manager requested to see Tarbuck's receipt before she left the store. Tarbuck ended up leaving the store with only three items and left her cart full of the other bagged items at the store.

After Tarbuck left, the store manager contacted law enforcement because she believed that Tarbuck was attempting to commit theft. Law enforcement instructed the store manager to reprint the receipt for Tarbuck's transaction, ring up the remaining items in the cart, and compare the receipts. Only three items on Tarbuck's reprinted receipt rang up as more than one cent. These are the same three items that Tarbuck left the store with. The remaining items rang up as "American Vegetable PA" for $0.01. The store manager did not find any "American Vegetable" seed packets in Tarbuck's shopping cart.

Respondent State of Minnesota charged Tarbuck with one count of possession of shoplifting gear in violation of Minnesota Statutes section 609.521(b) (2022). The complaint alleged that while scanning items at the self-checkout, Tarbuck used a seed packet barcode that caused the items in her cart to ring up for one cent, instead of the regular price. The matter proceeded to a jury trial. At the start of trial, the parties agreed to amend the complaint to "a more appropriate charge"—possession of burglary or theft tools under Minnesota Statutes section 609.59 (2022).

The store manager testified at trial and a 44-second surveillance video from the self-checkout was played for the jury during her testimony. The store manager explained that the self-checkout surveillance video records the front of the shopper while the shopper is checking out. While the jury was viewing surveillance video, the store manager paused the video at various points to explain significant details to the jury and refer to photos of stills from the video. The store manager explained that, for an item to scan, the barcode needs to be placed face down on the scanner. The store manager pointed out where she perceived Tarbuck's left hand covering the barcode on a pizza box, and Tarbuck's right

hand opened down over the scanner. Before Tarbuck scanned the Prego pasta sauce, the store manager explained that "it looks like [Tarbuck] dropped something . . . [a]nd then she's picking something up to put it back on the front-facing [side of the Prego sauce]." The store manager stated, "something is being scanned, but it wouldn't be the Prego sauce." When asked what this "something" is, the store manager opined that Tarbuck scanned an "American Vegetable seed packet barcode." Tarbuck objected to this testimony as "speculation," and the district court overruled the objection. The store manager later opined that the Prego did not scan because the store manager believed an American seed packet barcode in Tarbuck's hand was scanned instead.

A law enforcement officer also testified and explained that he collected the receipts and evidence from the store and went to Tarbuck's home to get a statement from her. The officer spontaneously testified that Tarbuck invited him inside and stated that "she [knew] who [he was] from prior contacts." The officer continued to explain that Tarbuck "neither confirmed or denied [the theft], but she was emotional and was crying, clearly upset." Following this explanation, the state had no further questions.

Tarbuck waived her right to testify. The jury found Tarbuck guilty, and the district court imposed a 27-month prison sentence.

Tarbuck appeals.

DECISION

I. The district court did not abuse its discretion or plainly err by admitting the store manager's testimony.

Tarbuck argues that portions of the store manager's testimony were inadmissible opinion testimony under Minnesota Rule of Evidence 701. Under Minnesota Rule of Evidence 701, lay witnesses may testify about "opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge." "[T]he emphasis is not on how a witness expresses himself or herself—*i.e.*, whether in the form of an opinion or a conclusion—but on whether the witness personally knows what he or she is talking about and whether the testimony will be helpful to the jury." *State v. Post*, 512 N.W.2d 99, 101 (Minn. 1994).

Tarbuck argues that the store manager's testimony was not helpful to the jury for two reasons. First, she argues that a portion of the store manager's testimony was not helpful because it opined on an ultimate issue to be decided by the jury—that Tarbuck committed the charged offense by scanning the seed packet barcode. Second, Tarbuck argues that many other parts of the store manager's testimony describing the surveillance video footage was not helpful because the testimony "conveyed [the store manager's] opinions and inferences about what she believed she saw [Tarbuck] do in the exhibits," which "improperly invaded the jury's independent factfinding role by interpreting the exhibits for them." We address each argument in turn.

A. The district court did not abuse its discretion by admitting the store manager's testimony that Tarbuck scanned a seed-packet barcode.

We review the district court's evidentiary decisions for an abuse of discretion.[1] *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted). Tarbuck argues that the district court abused its discretion because the store manager's opinion testimony involved a mixed question of law and fact by opining on the ultimate issue to be decided by the jury. We disagree.

> STATE: Okay. And—and when you look at the receipt . . . and look—in regard to this, what do you believe was being scanned there?
> STORE MANAGER: Ah this should be . . .
> DEFENSE: Objection, speculation.
> THE COURT: Overruled.
>
> PROSECUTOR: Go ahead.
> STORE MANAGER: So this should be the third or fourth item underneath the fully-loaded supreme [pizza] on Exhibit 14.
>
> PROSECUTOR: Okay. What—again, what do you believe was used to scan . . .
> STORE MANAGER: An American Vegetable seed packet barcode.
> DEFENSE: Same objection.
> THE COURT: It's overruled. Go ahead.

[1]The state argues that we should apply the plain-error standard of review, rather than the abuse-of-discretion standard because Tarbuck's objection at trial is different from her argument on appeal. Because we conclude that Tarbuck is not entitled to relief under the higher abuse-of-discretion standard, we need not address the state's issue preservation and plain-error arguments.

It is true that "'[u]ltimate conclusion testimony which embraces legal conclusions or terms of art' is not helpful to the jury." *State v. Patzold*, 917 N.W.2d 798, 808 (Minn. App. 2018) (quoting *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990)), *rev. denied* (Minn. Nov. 27, 2018). But here, the store manager did not provide a legal opinion as Tarbuck argues. The store manager did not tell the jury that Tarbuck committed the charged offense but gave her opinion that a seed packet barcode was scanned. This testimony "was factual rather than legal and was offered in response to [a] leading question[]." *DeWald*, 463 N.W.2d at 744. Therefore, the district court's decision to overrule Tarbuck's objection and allow the store manager's testimony was not an abuse of discretion. *See State v. Salazar*, 289 N.W.2d 753, 755 (Minn. 1980) (concluding that the district court did not abuse its discretion by permitting a lay witness to testify that the defendant was not defending himself when he stabbed the victim).

B. The district court did not err by allowing the store manager's testimony describing the surveillance video and photo exhibits.

Tarbuck concedes that she did not object to the portion of the store manager's testimony describing what the surveillance video and photo exhibits showed Tarbuck doing at the self-checkout. When a defendant does not object at trial, the issue is forfeited and may only be corrected "when there is a plain error affecting a substantial right."[2]

[2] The state contends that Tarbuck did not argue the plain-error standard in her brief, so all of her arguments about the store manager's testimony are forfeited. The state does not support its forfeiture argument with any authority, and we conclude that Tarbuck adequately briefed the plain-error standard. *See State v. Porte*, 832 N.W.2d 303, 312-313 (Minn. App. 2013) (stating the general principle that "issues that are not raised by an appellant on appeal are deemed waived unless prejudicial errors are obvious from the

State v. Lilienthal, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted). To meet the plain-error standard, "the appellant must show that (1) error;(2) that was plain, and (3) that affected substantial rights." *Id.* If the defendant fails to establish any prong of the plain-error standard, we need not address the remaining prongs. *Id.*

Tarbuck argues that the district court plainly erred by allowing the store manager's testimony describing the surveillance video footage and photos because the testimony "conveyed [the store manager's] opinions and inferences about what she believed she saw [Tarbuck] do in the exhibits." Tarbuck argues the exhibits contradicted the store manager's inferences in her testimony and that the store manager's testimony was not "helpful to a clear understanding of the witness's testimony or the determination of a fact in issue."

Tarbuck failed to demonstrate that it was error for the district court to allow the store manager's testimony describing the surveillance video. "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). To establish plain error, Tarbuck relies on two civil decisions: *Dunshee v. Douglas*, 255 N.W.2d 42 (Minn. 1977); and *Dahlbeck v. DICO Co.*, 355 N.W.2d 157 (Minn. App. 1984). But both decisions are distinguishable from the facts here.

In *Dunshee*, the supreme court concluded that expert witness testimony "would have been little more than an interpretation of photographs," which cast doubt on "whether [it] would appreciably aid the jury." 255 N.W.2d at 48. It also explained that the expert had

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record" and concluding that the state's failure to assert a harmless-error argument waived that issue).

not examined the physical items in the photograph, did not witness the accident, and did not conduct any scientific tests. *Id.* In *Dahlbeck*, we concluded that the district court properly excluded lay opinion testimony describing accident pictures. 355 N.W.2d at 165. This court noted that the witness was not at the scene at the time of the accident, and the testimony would be speculative and would do little more than interpret photos, which the jury was capable of. *Id.*

In contrast, here, the store manager's testimony was "rationally based on her perceptions and was helpful to the jury." *State v. Washington*, 725 N.W.2d 125, 137 (Minn. App. 2006), *rev. denied* (Minn. Mar. 20, 2007). The store manager was familiar with the Dollar General self-checkout and interacted with Tarbuck while she used the self-checkout. The store manager also provided context from her experience that helped the jury. For example, the store manager explained to the jury how the self-checkout worked and that the item "needs to be face down in order to scan on our computer." The store manager pointed out critical details, such as where the barcode is typically located on items and the placement of Tarbuck's hand as she scanned the items.

Tarbuck argues that the physical exhibits contradicted this testimony. She specifically argues that the exhibits do not show the barcode on the side of the pizza boxes, Tarbuck's hand covering the barcode, the barcode on the back of the Prego jar, or Tarbuck dropping something. Upon our careful review of the of the record, we conclude that the store manager's testimony was consistent with the exhibits. We recognize that the surveillance video is only 44-seconds long and portions of the video and photos are grainy. Even so, the jury viewed the exhibits in comparison to the store manager's testimony and

other evidence and reached its own conclusions. *See Patzold*, 917 N.W.2d at 808 (concluding that it was not prosecutorial misconduct to elicit brief testimony from officers about facts and evidence revealed by their investigation that indicated assault and noting that the jury heard and saw the same evidence).

The record establishes that the store manager had personal knowledge relevant to the content of the exhibits that was helpful to the jury. *See State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010) (concluding district court did not plainly err by admitting deputy's opinion testimony that victim was assaulted because testimony was based on deputy's rational perceptions and helpful to the jury). Therefore, the district court did not err by allowing the store manager to describe the surveillance video and photos during her testimony.

II. The district court did not plainly err by admitting the officer's testimony that Tarbuck knew the officer from prior contacts.

Tarbuck argues that the district court plainly erred by admitting the officer's testimony that Tarbuck knew the officer "from prior contacts." In particular, she points to the following trial testimony:

> THE STATE: Now, officer, you had said that after you had secured the evidence that we are going to see here shortly, you—you went over and talked with the Defendant, is that right?
> OFFICER: That's right.
>
> THE STATE: Okay. Tell the jury about that, please.
> OFFICER: I knocked on her door, and she did answer and invited me inside. And I had . . . *she knows who I am from prior contacts.* And I said, "I'm here regarding a reported theft at the Dollar General, and I saw the video of you ringing up the items, and it looks like you were attempting to buy some things

> for less than they're worth." And she neither confirmed or denied that, but she was emotional and was crying, clearly upset. And that was about it. I said I would send my case to be reviewed by the prosecution, and I cleared.

(Emphasis added.)

As discussed above, because Tarbuck did not object to the officer's testimony at trial, we may only review whether the officer's testimony was "plain error affecting a substantial right." *Lilienthal*, 889 N.W.2d at 785 (quotation omitted). Tarbuck argues that the officer's testimony was plainly erroneous because the testimony was contrary to *State v. Strommen*, 648 N.W.2d 681, 687-88 (Minn. 2022), and the rules of evidence.

"Eliciting an officer's testimony that he knows the defendant from prior contacts is error if the defendant's identity is not an issue in the case." *State v. Valentine*, 787 N.W.2d 630, 641 (Minn. App. 2010). Because Tarbuck's identity was not in question here, the officer's testimony—"she knows who I am from prior contacts"—was erroneous.

That said, the error was not plain. Tarbuck's reliance on *Strommen* is unpersuasive. *"Strommen* did not hold that the officer's comments about prior contacts, on their own, were reversible plain error." *Id*. at 641. In *Strommen*, the state elicited testimony that the arresting officer "knew [the defendant] on a first-name basis and from 'prior contacts and incidents.'" 648 N.W.2d at 687. The supreme court concluded that this testimony was improper because, "the purpose in asking the offending questions was to illicit a response suggesting that [the defendant] was a person of bad character who had frequent contacts with the police." *Id.* at 688.

In contrast, here the officer's testimony was "fleeting, nonspecific, and minimally prejudicial." *State v. Atkinson*, 774 N.W.2d 584, 596 (Minn. 2009). The purpose of the officer's testimony was to provide an explanation for why Tarbuck invited the officer inside. The state's question was open-ended and "did not call for a response concerning whether or how the officer was familiar with [Tarbuck]." *Patzold*, 917 N.W.2d at 807. And once the officer finished explaining the interaction at Tarbuck's home, the state had no further questions and did not ask additional "unnecessary" questions about how Tarbuck knew the officer or about Tarbuck's criminal history. *Strommen*, 648 N.W.2d at 688. We conclude that this was an "unintended response[] under [an] unplanned circumstance[]." *Patzold*, 917 N.W.2d at 807.

Therefore, any error by the district court in admitting the officer's testimony about prior contacts with Tarbuck was not plain. *See id.* (concluding that the sergeant's testimony that he knew appellant from prior contacts was not plain error).

Affirmed.