STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1060

State of Minnesota,
Respondent,

vs.

Shawn Allen Moncrief,
Appellant.

Filed June 23, 2025
Affirmed
Harris, Judge

Pine County District Court
File No. 58-CR-21-1016

Keith Ellison, Attorney General, Jamal Zayed, Assistant Attorney General, St. Paul, Minnesota; and

Reese Frederickson, Pine County Attorney, Pine City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Ede, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the district court abused its discretion by (1) allowing the state to introduce the audio recording of the victim's statement to law enforcement and (2) allowing a deputy to testify about what the victim told him to establish context for the investigation. Because appellant

did not meet his burden to demonstrate that the admission of the victim's statements through the deputy and the audio recording significantly affected the verdict, we affirm.

FACTS

Respondent State of Minnesota charged appellant Shawn Allen Moncrief with two counts of first-degree criminal sexual conduct—force or coercion—personal injury, under Minnesota Statutes section 609.342, subdivision 1(c)(i) (Supp. 2021).[1] Count 1 alleged that Moncrief engaged in sexual penetration with the victim using his penis, and count 2 alleged that he engaged in sexual penetration with the victim using his finger. Moncrief pleaded not guilty, and the matter proceeded to a jury trial. The following facts were established at trial.

The victim and Moncrief had a mutual friend and were communicating via Facebook messenger and text message. They planned to meet for dinner and a movie at Moncrief's house because Moncrief could not drive. Moncrief told the victim to bring "cuddle clothes" to wear while they watched the movie. The victim changed into the "cuddle clothes," and then they started watching a movie while a pizza was cooking. Then, according to the victim, "things started to happen," and "escalat[ed] into different, [and] inappropriate touches." The victim described Moncrief attempting to pull down her pants multiple times, "[sticking] his fingers in [her] private area," and biting her breasts. The victim explained that the interaction eventually escalated to intercourse and described it as

[1] In the complaint, Moncrief was charged under the 2020 version of the statute. Because the statute was amended in 2021, the district court granted the state's oral motion to amend the complaint.

"forceful." The victim made up an excuse to leave, went home and took a shower, and told her roommate what happened. Then, the victim went to the hospital for a sexual assault examination and reported what happened to law enforcement.

At trial the victim admitted that her memory faded a little bit because the incident was a few years ago. The victim stated that she "honestly [didn't] remember what [she] said" in response to Moncrief sticking his fingers in her private area. When the assault escalated to intercourse, the victim explained she "was [at] the point where [she] was . . . in [her] head saying things and praying and wanting it to stop." The victim remembered talking to law enforcement and making a statement that she tried to say no. During cross-examination, defense counsel asked the victim if she told Moncrief "no at any point." The victim responded, "I don't recall."

The deputy testified that he received a call from a female reporting a sexual assault from the previous night. The deputy met the victim at the hospital and took a recorded statement, which was later received into evidence and played for the jury. The deputy testified about what the victim told him during her recorded statement and stated, in relevant part, "She mentioned at one point that . . . he had like taken his hand and rubbed around her genitals, . . . and at that point she said, like, 'No, I don't want to do this,' . . . and he continued to just kind of force himself on to her."

A forensic nurse testified about the sexual assault examination and to portions of the victim's statements that were relevant to the medical diagnosis. The nurse testified that the victim "was penetrated . . . and her pleas to stop were ignored." The nurse further

testified that the victim told her "she said no at the beginning, but kind of quit protesting just to get it over with."

Moncrief waived his right to testify. However, the jury heard his version of events via a recorded statement he gave to law enforcement. Moncrief maintained that the victim never said no, and he stopped because "it didn't feel right." Moncrief stated, "I'm not lying to you. She never said no to me. If she would've said no[,] I would've stopped right away and nothing would've happened. I'm serious." Then, when questioned further, Moncrief stated, "I don't remember if she said no at any time. I swear. If she did, I am sorry. I just wanna go home. I want my life back." Moncrief also admitted, "We did have sex . . . . I kept asking her if she was okay with it and she did say that she was alright with it but I don't know if she really was alright with it."

During deliberations, the jury asked to listen to Moncrief's and the victim's recorded statements. A juror asked to rewind the victim's statement "[b]ecause there's certain things, and [she] . . . didn't catch all of it." The jury later requested to listen to the victim's statement again, and approximately five minutes in, the same juror requested to pause the recording to make a note. Approximately one hour later, the jury found Moncrief guilty of count 1 and not guilty of count 2. The district court sentenced Moncrief to the presumptive sentence of 144 months in prison and 10 years on conditional release.

Moncrief appeals.

DECISION

Moncrief argues that the district court abused its discretion by (1) allowing the state to introduce the audio recording of the victim's statement to the deputy and (2) allowing

that deputy to testify about what the victim told him to establish context for the investigation. Moncrief argues that his conviction must be reversed because there is a reasonable possibility that these hearsay statements significantly affected the verdict. The parties disagree about whether Moncrief properly preserved these evidentiary issues for appeal. Therefore, we first consider whether Moncrief properly preserved these issues at trial and whether Moncrief's arguments are forfeited. Then, assuming error, we turn to whether Moncrief met his burden to establish that the alleged evidentiary errors affected his substantial rights.

I. Moncrief did not properly preserve the issues for appeal by renewing his pretrial objections to the alleged errors at trial.

The state argues that Moncrief did not properly preserve the issues below, and therefore the plain-error standard of review applies. Moncrief argues that he preserved the issues by objecting to the audio recording and the deputy's testimony prior to trial.

"A defendant may preserve an evidentiary error by making a pretrial motion to exclude the challenged evidence or by objecting at trial when the evidence is introduced." *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). "Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error." Minn. R. Evid. 103(a). "[E]videntiary objections should be renewed at trial when an in limine or other evidentiary ruling is not definitive but rather provisional or unclear, or when the context at trial differs materially from that at the time of the former ruling." *State v. Word*, 755 N.W.2d 776, 783 (Minn. App. 2008). "[W]hen an attorney is unsure whether evidence

offered at trial violates an evidentiary ruling, the attorney should renew an objection or seek clarification or reversal of a prior ruling." *Id.* When a defendant does not object at trial, the issue is forfeited and may only be reviewed "when there is a plain error affecting a substantial right." *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

A. Moncrief did not object to the audio recording as inconsistent during trial and the district court did not definitively rule on Moncrief's pretrial objection.

Moncrief argues that the district court erred by admitting the audio recording of the victim's statement to the deputy as a prior consistent statement under Minnesota Rules of Evidence 801(d)(1)(B). Prior to trial, Moncrief argued that the jury should not hear these statements because the victim's credibility was not being challenged. He argued that they were not going to attack the victim's credibility, "except maybe her ability to remember events, but that's not the same thing as calling her a liar on the stand and then permitting [the state] to remedy that by playing [the recording]."

The district court determined that "there is a credibility issue central to this case," but reserved ruling on whether the state could introduce the victim's recorded statements, noting that it could not make this decision until after the victim testified. When discussing the recording with the court outside the presence of the jury, Moncrief did not object to the recording as a prior consistent statement and rested on his prior stated objections. The district court found the recording was admissible as a prior consistent statement, stating:

> [T]oday what I am going to do is indicate that *I did make the determination already that the . . . credibility of [the victim] is squarely at issue in this case, and that is one of the factors*

> *under the rule for admitting a prior consistent statement. I did indicate that I would not be able to make a final determination until the testimony was heard in court by the witness.*
>
> I have had her statement on my screen during her testimony . . . and I do find that it is a prior consistent statement . . . and so I am going to authorize . . . or allow the State to . . . play the . . . audio of that statement as a prior consistent statement.

(Emphasis added.) Moncrief also did not object when the state offered the recording during the deputy's testimony.

On appeal, Moncrief argues that the district court erred by admitting the audio recording because the victim's credibility had not been challenged and because the recording was inconsistent with the victim's trial testimony. Because the district court definitively ruled that credibility was at issue in the case prior to trial, Moncrief preserved this portion of his argument by resting on the previous objections. *See* Minn. R. Evid. 103(a). However, Moncrief did not also preserve the issue of whether the recording was a "consistent statement" because the district court reserved ruling on this issue. And an "objection to the admission of evidence preserves review only for the stated basis for the objection or a basis apparent from the context of the objection." *Vasquez*, 912 N.W.2d at 649. The district court's pretrial ruling was limited to the victim's credibility, and it correctly reserved the issue of whether the recorded statement was admissible as a prior consistent statement until after the victim testified. Therefore, Moncrief should have renewed his objection at trial or sought clarification or reversal of the district court's prior credibility determination. *Word*, 755 N.W.2d at 783. Trial was the first opportunity for Moncrief to object to the recording as inconsistent with the victim's trial testimony, and

Moncrief did not raise such an objection at trial. *See Lilienthal*, 889 N.W.2d at 785 (stating "an objection to the admissibility of evidence must be made at the first opportunity"). Therefore, this argument is forfeited and may only be reviewed for plain error. *Id.*

B. Moncrief did not object to the deputy's testimony as hearsay during trial and the statements went beyond the context of the district court's provisional ruling on Moncrief's motion in limine.

Moncrief argues that the district court abused its discretion by allowing the deputy to testify about what the victim told him to establish context for the investigation. Moncrief relies on *State v. Litzau*, 650 N.W.2d 177, 182 (Minn. 2002), to argue that the district court erred by allowing the deputy "to testify about the substance of [the victim's] hearsay statements . . . 'to give context to why [the police] took the action that they did and how they moved forward.'" Moncrief's argument focuses on the following portion of the deputy's testimony: "She mentioned at one point that . . . he had like taken his hand and rubbed around her genitals, . . . and at that point she had said, like, 'No, I don't want to do this,' . . . and he continued to just kind of force himself on to her."

Moncrief relies on a portion of his motion in limine to argue that this error was preserved. The defense moved "[f]or an Order prohibiting testimony of any law enforcement officer, investigator, or other agent for the State of Minnesota concerning statements made by other persons, or opinions derived from statements made by other persons." The state did not respond to this particular portion of the defense's motion in limine. However, prior to the discussion of the defendant's motion in limine, the district court made a definitive ruling that law enforcement could testify about the victim's

statements "to give context to why they took the action they did and how they moved forward." The district court described the scope of its ruling in detail, explaining:

> My intent, my expectation, was th[at] [law enforcement] would get on the stand and say, "We got a phone call for service. We went out and met with [the victim]. She reported that she had, you know, been the victim of a sexual assault. Uh, we asked her for details. This is what she provided us. She seemed upset. She was nervous. She was, you know, crying, tearful," whatever their report is. "We then, you know, with that information, we then, you know, set up an examination, we went to the home of the alleged perpetrator."

The defense did not object to this ruling, or seek clarification. In fact, the defense stated, "we may have hearsay objections to certain parts of [law enforcement's] statements, but the focus is that [the state] would then play a statement, a recorded statement, from two years ago." The next day, the district court clarified its ruling again, stating:

> I did make that determination that clearly the investigators can say, "Look, we got this call, and she said, 'This is what happened,' and we asked her about the situation, and she identified Mr. Moncrief, and that's why we went over." You know, you've got to have a story, right, I mean, to explain to the jury what's going on.

On appeal, Moncrief now argues that the district court erred because it should have limited the deputy's testimony "to the fact that he spoke to [the victim] without disclosing the substance of that conversation." It appears the district court did just that. If, during trial, Moncrief believed that the state was eliciting inadmissible hearsay that was not being offered to explain the context of the investigation in violation of the district court's limited ruling, he had the burden to renew his objection. *Word*, 755 N.W.2d at 783. Moncrief did not object during this portion of the deputy's testimony describing the substance of the

victim's recorded statement, and now does not argue that the prosecutor engaged in misconduct by, for example, intentionally eliciting inadmissible hearsay in violation of the district court's order or failing to properly prepare the witness. Therefore, this argument is also forfeited and may only be reviewed for plain error. *Lilienthal*, 889 N.W.2d at 785.

II. Moncrief forfeited his arguments by not arguing the plain-error standard on appeal.

Because, as discussed above, Moncrief did not object at trial, the alleged evidentiary errors are forfeited. *Id*. However, appellate courts have discretion to consider forfeited errors under the plain-error standard. *United States v. Olano*, 507 U.S. 725, 731-32 (1993); *State v. Beaulieu*, 859 N.W.2d 275, 279 (Minn. 2015); Minn. R. Crim. P. 31.02. Under the plain-error standard, the defendant has the burden to demonstrate (1) error; (2) that was plain; and (3) that affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If any prong of the plain-error standard is not met, we need not address the other prongs. *Lilienthal*, 889 N.W.2d at 785.

The state argues that Moncrief's arguments are forfeited because he did not argue the plain-error standard in his brief.[2] Moncrief argues that both errors were objected to at trial and that the abuse-of-discretion standard of review applies. However, as discussed

[2] The only suggestions of the plain-error standard in Moncrief's brief are a footnote to a nonprecedential case where the district court erred by admitting a recording as a prior consistent statement, and a discussion of harmless-error, which could be construed as a substantial-rights argument. We also note that Moncrief did not file a reply brief rebutting the state's characterization of the record, or otherwise arguing that the plain-error standard does not apply.

above, Moncrief did not properly preserve the issues by renewing any pretrial objections, so the plain-error standard applies.

The state's forfeiture argument raises the question of whether we should conduct the plain-error analysis on our own initiative when the plain-error standard was not briefed by the appellant. We recognize that the plain-error standard is discretionary and should only be used to correct "particularly egregious errors," and only "in those circumstances in which a miscarriage of justice would otherwise result." *State v. Huber*, 877 N.W.2d 519, 528 (Minn. 2016) (quotation omitted). And, in general, "issues that are not raised by appellant on appeal are deemed waived unless prejudicial errors are obvious from the record." *State v. Porte*, 832 N.W.2d 303, 312-13 (Minn. App. 2013) (quotation omitted).

We conclude that Moncrief's arguments are forfeited because plain error is not obvious from the record. *See State v. Levie*, 695 N.W.2d 619, 627, n.3 (Minn. App. 2005) (stating that appellant who did not argue plain error in appellate brief forfeited the issue). An evidentiary error constitutes plain error if it is "so clear under applicable law at the time of the conviction, and so prejudicial to the defendant's right to a fair trial, that the defendant's failure to object—and thereby present the [district] court with an opportunity to avoid prejudice—should not forfeit his right to a remedy." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006) (quotation omitted).

Both of Moncrief's arguments are challenges to hearsay statements. We are hesitant to analyze the district court's admission of hearsay statements for plain error. *State v. Stone*, 982 N.W.2d 500, 512-13 (Minn. App. 2022), *aff'd on other grounds*, 995 N.W.2d

617 (Minn. 2023). In *Manthey*, the supreme court recognized the difficulty of reviewing hearsay for plain error stating:

> The number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the trial court's decision-making process in either admitting or excluding a given statement. The 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.

711 N.W.2d at 504.

As the state argues, multiple hearsay exceptions could apply here. For example, the audio recording may have also been admissible under the residual hearsay exception. *See* Minn. R. Evid. 807. The district court could have also determined that the deputy's testimony was not hearsay. Minn. R. Evid. 801(c), (d)(1)(B). Therefore, because plain error is not obvious and because Moncrief did not argue the plain-error standard in his brief, Moncrief's arguments are forfeited.

III. Even if we assume that the district court plainly erred, Moncrief did not meet his burden to demonstrate that the alleged evidentiary errors affected his substantial rights.

Moncrief argues that the district court's admission of the victim's statements through the audio recording and the deputy's testimony was not harmless. Although harmless error and plain error are different, the substantial-rights 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).

An error affects a defendant's substantial rights "if there is a reasonable likelihood that the error significantly affected the verdict." *State v. Strommen*, 648 N.W.2d 681, 688

(Minn. 2002). To determine whether the error significantly affected the verdict, we consider non-exclusive factors, including "the manner in which the evidence was presented, its persuasive value, its use in closing argument, and [the defendant's] counter of the evidence." *State v. Bigbear*, 10 N.W.3d 48, 56 (Minn. 2024). We also consider strong evidence of guilt because "[s]trong evidence of guilt undermines the persuasive value of wrongly admitted evidence." *Id.* at 59 (quotation omitted).

Here, Moncrief argues that erroneous admission of the victim's statements to the deputy significantly affected the verdict because the statements were prominent and persuasive, used in the state's closing argument, not effectively countered, and because the evidence of guilt was not strong. The challenged statements involve whether the victim told Moncrief "no." Moncrief challenges the following portion of the victim's recorded statement to law enforcement:

> Q: How, how did it escalate? Oh. Can, can you tell me how it escalated?
> A: Um . . . basically first it was like, you know, pulling the shirt um . . . then it went to just rubbing down there and then um . . . he kept trying to get in further but I kept trying to pull em up and I said no at first because I had the strength but then it started going in and then I . . .
>
> Q: So at first you were able to verbally say no?
> A: Yeah.

Moncrief also directly challenges the following portion of the deputy's testimony:

> She mentioned at one point that . . . he had like taken his hand and rubbed around her genitals, . . . and at that point she said, like, 'No, I don't want to do this,' . . . and he continued to just kind of force himself on to her.

Based "on the relative number of transcript pages," the challenged statements were a small portion of the trial, approximately five transcript pages and 30 seconds of a 13-minute audio recording. *Id.* at 56. But the state emphasized the statements by using them throughout its case. *Id.* For example, the challenged statements were referenced both at the beginning and at the end of the state's case-in-chief and introduced by two different methods—the deputy's statement and the audio recording. And even though whether the victim said "no" is not directly correlated with whether she consented, whether the victim said "no" was emphasized by law enforcement while interviewing Moncrief and throughout the state's case. *Id.*

However, we conclude that Moncrief did not meet his burden to demonstrate that the challenged statements significantly affected the verdict because Moncrief effectively countered the evidence during cross-examination of the victim and during closing argument, the evidence was not key on a material element of the offense, and there was other evidence of guilt. Moncrief argues that he did not counter the evidence during cross-examination or address it in closing argument. This is not supported by the record. During cross-examination, defense counsel asked the victim if she told Moncrief "no at any point." The victim responded, "I don't recall." And during closing argument, the state referenced the victim's statements to the deputy, but then stated:

> Let me remind you that . . . [the victim] is not required, as the jury instructions say, to resist a particular sexual act. You are not here to judge her on if she said no enough times, if she said it loud enough, if she chose to go to the defendant's house. You're here to look at whether she consented to these particular sexual acts, which she did not. Her words say so.

The state later emphasized that the victim "was consistent throughout her statements." Moncrief countered during his closing argument by noting the discrepancies between the victim's trial testimony and the recorded statement to law enforcement. The defense argued: "In her direct testimony on a cross-examine, she says she doesn't remember if she said no, . . . and we're not really clear from either one of those recordings when no was said, if it was said at all or if she said it out loud."

Moncrief argues that the state used the victim's recorded statement to the deputy to prove the element of lack of consent. However, "[c]onsent does not mean . . . that the complainant failed to resist a particular sexual act." Minn. Stat. § 609.341(a) (Supp. 2021). Although Moncrief argued that this case was about "people remembering different things," the record contains other evidence of the victim's lack of consent and Moncrief's guilt.[3] The victim described Moncrief attempting to pull down her pants multiple times, "[sticking] his fingers in [her] private area," and biting her breasts so hard that "it felt like they were going to be ripped off." She testified that "everything was so rough." The victim also described pulling up her pants multiple times after Moncrief kept pulling them down because she "didn't want it." When the assault escalated to intercourse, the victim explained that she "was [at] the point where [she] just was . . . in [her] head saying things and praying and wanting it to stop." The victim also testified about making a statement to law enforcement and remembered telling law enforcement that she "tried to say no."

[3] We also note that the challenged statements are related to the victim saying "no" in response to attempted digital penetration. But the jury acquitted Moncrief of the count involving digital penetration.

And the challenged statements about the victim saying "no" did not "elicit[] new information." *Bigbear*, 10 N.W.3d at 57 (quotation omitted). The nurse testified that the victim's "pleas to stop were ignored," and that "she said no at the beginning, but kind of quit protesting just to get it over with." The nurse also testified consistently with the victim, explaining that Moncrief penetrated the victim vaginally, that the victim described the assault as "rough and painful," and that Moncrief slapped the victim's nipples and pulled her hair. The nurse also described photographs of the victim's injuries.

In sum, after weighing the factors, we conclude that Moncrief did not meet his burden to demonstrate that the erroneous admission of the victim's statements through the deputy and the audio recording significantly affected the verdict.[4]

Affirmed.

[4] Even if Moncrief did meet his burden on this prong, "an appellate court may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Pulczinski v. State*, 972 N.W.2d 347, 356 (Minn. 2022). Moncrief did not address that the alleged error affected "the fairness, integrity, or public reputation of the judicial proceedings" in his brief and any argument on this prong is forfeited. And because the alleged errors involve discretionary evidentiary determinations that were not objected to, "failing to correct the error[s] would [not] . . . caus[e] the public to seriously question whether our court system has integrity and generally offers accused persons a fair trial." *Id.*