

*This opinion is nonprecedential except as provided by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
A24-1264**

State of Minnesota,
Respondent,

vs.

Jill Diane Tucker,
Appellant.

**Filed June 23, 2025
Affirmed
Reyes, Judge**

Stearns County District Court
File No. 73-CR-23-9157

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

Renee N. Courtney, St. Cloud City Attorney, Courtney J. Petruzates, Assistant City Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court (1) abused its discretion by admitting into evidence a photo of a receipt identifying allegedly stolen items when the prosecutor failed

to lay sufficient foundation for its admission and (2) committed reversible plain error because its admission violated her rights under the Confrontation Clause. We affirm.

FACTS

On September 14, 2023, appellant Jill Diane Tucker used the self-checkout at the Sartell Walmart and attracted the attention of Amanda Gohman, a member of the store's asset-protection team. Gohman noticed that appellant failed to scan nine items via the store's surveillance cameras and an application on her phone that allowed her to watch items scanned on the register in real time. Gohman confronted appellant as she exited the store. Because the items amounted to more than \$25, Gohman called the police per Walmart's policy. Respondent State of Minnesota charged appellant with misdemeanor theft.

At a jury trial, appellant's counsel objected to the state's introduction of exhibit 5, a photo of a receipt of the items for which Tucker allegedly did not pay, for a lack of foundation. Appellant's counsel voir dired Gohman regarding the exhibit, but the district court ultimately overruled the objection and admitted it into evidence.

The jury found appellant guilty of misdemeanor theft, and the district court sentenced her to a stayed 90-day jail term, placed her on probation for one year, and imposed a \$50 fine. This appeal follows.

DECISION

I. The district court did not abuse its discretion when it admitted exhibit 5 into evidence.

Appellant argues that the district court abused its discretion when it admitted exhibit 5 into evidence over defense counsel's objection because the state did not lay sufficient foundation. We are not persuaded.

Minn. R. Evid. 901(a) requires "authentication or identification as a condition precedent to admissibility," which "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Minn. R. Evid. 901(b)(1) provides that evidence may be authenticated by the testimony of a witness with knowledge that the evidence is what its proponent claims it to be.

"Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). "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." *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Photo evidence can be authenticated by a witness who observed what is depicted in the photo and attests that the evidence is what the proponent claims it to be. *In re Welfare of S.A.M.*, 570 N.W.2d 162, 164, 167 (Minn. 1997). Exhibit 5 is a photo of a receipt that lists nine items that were in appellant's cart as she exited Walmart for which Gohman testified that appellant did not pay. Before moving for the exhibit's admission, the prosecutor asked Gohman whether she recognized the photograph. Gohman stated that she

did and that it was “the receipt for the total of the unpaid merchandise.” Gohman stated that she was not present when her manager took the photograph “[a]t customer service when she did the transaction”; agreed that the “photograph accurately reflect[s] the receipt that was created to document the unpaid merchandise”; and that there were no “material alterations to the receipt.” Gohman also confirmed that the photograph was “kept within the normal course of business for Walmart as part of the case file.”

The district court did not abuse its discretion by admitting exhibit 5 because Gohman’s testimony, based on her personal knowledge and observations that the photo “accurately reflect[ed]” the receipt of the nine items stolen, provided sufficient foundation for its admission.

II. The district court did not commit reversible plain error by violating appellant’s rights under the Confrontation Clause when it admitted exhibit 5 into evidence.

Appellant argues that the district court plainly erred by admitting exhibit 5 because its admission violated her rights under the Sixth Amendment’s Confrontation Clause given that it was testimonial, admitted for the truth of the matter asserted, and she could not cross-examine the declarant. We disagree.

The Sixth Amendment of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. am. VI. In *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004), the Supreme Court held “that *testimonial* statements by witnesses who do not testify at trial could not be admitted unless the witness is unavailable to testify and the defendant had a prior opportunity to cross-examine the witness.” *State v. Ahmed*, 708

N.W.2d 574, 580 (Minn. App. 2006). There are three general categories of testimonial statements. Relevant to appellant's argument is the third category, "statements that were made under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006). "[T]he critical determinative factor in assessing whether a statement is testimonial is whether it was prepared for litigation." *Id.* at 309.

Appellant correctly acknowledges that, because she did not raise this argument before the district court, this court applies a plain-error standard of review. An error that is unobjected to at trial is reviewed on appeal for plain error. *See State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016). Under the plain-error standard, relief is available only if there was (1) an error, (2) that was plain, and (3) that affected a party's substantial rights. *Id.* Only if all three prongs are met do appellate courts "consider whether reversal is required to ensure the fairness and integrity of the judicial process." *Id.* It is the appellant's burden to establish that there is "a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *Id.* (quotations omitted). We need not decide whether there was error that was plain because the admission of exhibit 5 did not affect appellant's substantial rights.

In *State v. Jackson*, despite determining that the admission of a firearm-trace report did not constitute plain error, this court went on to "consider the persuasiveness" of the evidence and address appellant's argument that the report "significantly affected the verdict." 764 N.W.2d 612, 620 (Minn. App. 2009). In considering the persuasiveness of the evidence, this court considered the factors articulated in *Caulfield*: (1) the manner in

which the state presented the evidence; (2) whether the evidence was highly persuasive; (3) whether the state used the evidence in closing argument; and (4) whether the defendant effectively countered the evidence. *See id.* at 120-21; *Caulfield*, 722 N.W.2d at 314-16.

Under the first *Caulfield* factor, the trial was short, with all the evidence presented in one day. Like in *Caulfield*, “[t]here is no chance that the [exhibit] was lost among a plethora of other evidence” as exhibit 5 was one of just six exhibits admitted at trial, and one of just two nonvideo exhibits. *Id.* at 314. This weighs in favor of finding for appellant.

Under the second factor, exhibit 5 is not highly persuasive. While it identifies the items that appellant did not pay for, the more persuasive evidence is the surveillance video that shows appellant not scanning all of her items while checking out, and Gohman’s accompanying testimony based on her direct observation through the surveillance video and her phone application. This factor weighs strongly against finding for appellant.

Under the third factor, the state referenced exhibit 5 during closing argument but only in a way that tied together Gohman’s testimony and the video exhibits. This factor weighs against finding for appellant.

Under the fourth factor, appellant countered exhibit 5 both during cross-examination of both Gohman and the state’s other testifying witness and at closing argument. This weighs against finding for appellant.

A review of these factors, with an emphasis on the fact the surveillance videos and testimony from Gohman are more persuasive than exhibit 5, establishes that any assumed

erroneous admission of the exhibit did not affect appellant's substantial rights. *See id.* at 317; *Jackson*, 764 N.W.2d at 620-21. Accordingly, appellant's plain-error argument fails.

Affirmed.