

*This opinion is nonprecedential except as provided by  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  
A21-1052**

State of Minnesota,  
Respondent,

vs.

Wendy Beth Boggs,  
Appellant.

**Filed August 8, 2022  
Affirmed  
Johnson, Judge**

Otter Tail County District Court  
File No. 56-CR-20-2114

Keith Ellison, Attorney General, Edwin Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Ross, Judge.

**NONPRECEDENTIAL OPINION**

**JOHNSON, Judge**

An Otter Tail County jury found Wendy Beth Boggs guilty of third-degree assault based on evidence that she punched her sister in the face during an argument and did not do so in self-defense. Boggs argues that her trial was unfair because a law-enforcement

officer testified that he did not believe Boggs's statement about the incident. We conclude that there is no reversible error and, therefore, affirm.

## **FACTS**

Boggs's conviction arises from an incident that occurred on August 24, 2020, when Boggs, her sister, and other relatives were staying at a vacation property on Otter Tail Lake. Boggs and her sister got into an argument, which concluded when Boggs punched her sister in the face and broke her nose. The sister's adult daughter (who did not witness the physical confrontation) called 911. Deputy sheriffs went to the property and interviewed Boggs, her sister, and the sister's adult daughter.

The state charged Boggs with third-degree assault, in violation of Minn. Stat. § 609.223, subd. 1 (2020); domestic assault by causing fear of bodily harm, in violation of Minn. Stat. § 609.2242, subd. 1(1) (2020); and domestic assault by causing bodily harm, in violation of Minn. Stat. § 609.2242, subd. 1(2).

The case was tried to a jury on two days in March 2021. Both Boggs and her sister testified, and they provided conflicting versions of the incident. Boggs's sister testified for the state that, as she and Boggs argued, she followed Boggs into a bedroom. Boggs's sister testified that she "[t]ried to stay out of her way so she could get her stuff so she could leave." Boggs's sister testified that Boggs then grabbed her and punched her in the face several times. The state also called as a witness Sergeant Wagner, who responded to the 911 call and interviewed Boggs, her sister, and the sister's adult daughter.

During the defense case, Boggs testified that her sister became "very upset" and confrontational toward her. Boggs testified that she went to a bedroom to pack her

belongings so that she could leave. Boggs testified that her sister blocked the doorway, grabbed her arms, pushed her against a bedroom window, and kneed her in her legs and stomach. Boggs testified that she punched her sister in the face “at least once” in self-defense. Boggs introduced photographic exhibits of bruises that she claims to have sustained during the incident.

The district court instructed the jury on the law of self-defense. The closing arguments focused on whether Boggs acted in self-defense and whether her use of force was reasonable. The jury found Boggs guilty on counts 1 and 3 but not guilty on count 2. The district court stayed imposition of sentence, ordered Boggs to serve 60 days in jail, and placed her on probation for five years. Boggs appeals.

### **DECISION**

Boggs argues that she was denied her right to a fair trial on the ground that Sergeant Wagner testified that he did not believe that Boggs’s version of the incident was credible.

Whether a witness is credible or not credible is “strictly the domain of the jury.” *State v. Blanche*, 696 N.W.2d 351, 374 (Minn. 2005). One witness may not “vouch for or against the credibility of another witness.” *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). Accordingly, in *State v. Koskela*, 536 N.W.2d 625 (Minn. 1995), the supreme court expressed concern about a police officer’s testimony that the defendant was telling the truth when he confessed to the alleged crime. *Id.* at 630. Similarly, in *State v. Ellert*, 301 N.W.2d 320 (Minn. 1981), the supreme court held that the district court erred by admitting a police officer’s testimony that the defendant lied when she gave an exculpatory statement. *Id.* at 323.

Boggs's argument is based on three statements by Sergeant Wagner, each of which was made when he was being cross-examined by Boggs's attorney. First, in response to a series of questions about Boggs's statements to Sergeant Wagner, he testified as follows:

[W]hat she was saying is that she was being badgered and all she wanted to do was leave. So, she had to fight—she had to punch [her sister], I guess, in the face to get out of there. *Which didn't appear to be the case.* She said something to that effect. That she . . . kept saying that "I couldn't leave." "I couldn't leave." And so—*which I didn't find credible* because when I was sitting there, or when we arrived [Boggs's sister] was in the other side of the house. Ms. Boggs was seated. She could have left at any time. But that's basically her justification for what she did, is my recollection of our conversation. (Emphasis added.)

Second, in response to questions about why Sergeant Wagner did not conduct a more thorough investigation, he testified as follows:

Q: —If someone is stating that they were bruised and they were being physically assaulted, so they engaged in a conduct to get someone off them, you're not going to take photos right then and there?

A: Not if I don't have a female officer. I'm not going—

Q: Or not if you don't believe it.

A: —remove—. Both. *I didn't find her statement to be credible* and there was not a female officer there." (Emphasis added.)

Q: The only reason you didn't believe it, based on the entire of your entire police report, is someone had a broken nose; correct?

A: That's not correct at all, sir.

Q: Then why not take photos right away? Tell me.

A: I just explained. Because she's a female and we had three men there at the scene. I was not going to photograph a female under her clothing at the scene. That wouldn't be appropriate.

Third, in response to additional questions about Boggs's statements to Sergeant Wagner, he testified as follows:

Q: . . . . And again, she was very consistent with you. Consistent. Telling you exactly what had happened between her and her sister.

A: She was consistent, but I didn't — *I didn't take her statement as credible*. She said over and over that she needed to leave, and I had to do something to get her off of me, things like that. When she — when [the sister] was visibly injured, and she could have left the house at any time she didn't. She sat down. She was sitting inside the house when we got there. (Emphasis added.)

In closing argument, Boggs's attorney specifically referred to Sergeant Wagner's testimony in support of his argument that Sergeant Wagner did not conduct an adequate investigation:

And with my cross examination of Sergeant Wagner, I wasn't trying to say police officers are bad or they're all terrible people and cops are just terrible. That's not it. But when an investigation falls short of what it should be, it needs to be called out. And that's what we have here.

Sergeant Wagner got called to the scene. Knows there's an injury to a nose, a broken nose. There's blood everywhere. And was completely dismissive of Ms. Boggs's statement to him about defending herself. Did not want to take photographs. Did not take photographs at the jail. And in fact, Ms. Boggs had to get him back there to take photographs of her injuries, even though she said she had pain and had injuries underneath her garments.

Nor did Sergeant Wagner go to [Boggs's sister] after the fact and say, woah, what's this? Broken bone, that's it. And that's not fair. Because there's way more to this narrative than what happened to [Boggs's sister].

On appeal, Boggs contends that Sergeant Wagner vouched for the testimony of Boggs's sister in violation of the caselaw that prohibits one witness—especially a law-enforcement officer—from vouching for the testimony of another witness. In response, the state argues that there is no reversible error because the challenged testimony was elicited by Boggs's attorney and because the district court was not obligated to act *sua sponte* to exclude the testimony.

Boggs concedes that she did not object at trial to the testimony she challenges on appeal. Accordingly, the plain-error test applies. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under the plain-error test, we will reverse a conviction only if the appellant shows that (1) the district court committed an error, (2) the error was plain, and (3) the plain error affected the appellant's substantial rights. *See Griller*, 583 N.W.2d at 740. “An error is plain if it was clear or obvious,” such as if “the error contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). An error affects the substantial rights of an appellant if it was “prejudicial and affected the outcome of the case.” *Griller*, 583 N.W.2d at 741. If an appellant establishes the first three requirements of the plain-error test, “we will correct the error only if the error seriously affects the fairness, integrity, or the public reputation of judicial proceedings.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011).

We begin our analysis with the second challenged statement of Sergeant Wagner. That statement was made in response to questions posed by Boggs’s attorney, which appear to have been designed to elicit the testimony that was given—that Sergeant Wagner did not believe Boggs. That testimony provided an evidentiary basis for Boggs’s theory of the case—that Sergeant Wagner did not conduct an adequate investigation into whether Boggs’s sister assaulted Boggs. But Boggs cannot establish an error based on her own deliberate attempt to elicit testimony that she now characterizes as vouching testimony. In *State v. Underwood*, 281 N.W.2d 337 (Minn. 1979), the supreme court stated that a defendant’s attorney “has a certain responsibility to limit the cross-examination [of a law-enforcement officer] so as to avoid areas which he knows may lead to objectionable testimony” and may not “bootstrap a reversal by eliciting improper testimony from a prosecution witness on cross-examination.” *Id.* at 342. That is essentially what Boggs’s attorney did in this case just before the second challenged statement of Sergeant Wagner. Thus, Boggs cannot establish an error based on that statement.

A similar analysis applies to the third challenged statement of Sergeant Wagner. That statement was not elicited in the exact same manner as the second statement. But Boggs’s attorney’s cross-examination of Sergeant Wagner was focused on the same subject—the statements that Boggs had made to him—and appears to have had the same purpose—to elicit testimony that Sergeant Wagner did not believe Boggs. Boggs’s attorney later used that evidence to argue to the jury that Sergeant Wagner did not conduct a full investigation. Thus, Boggs also cannot establish an error based on the third challenged statement of Sergeant Wagner. *See id.*

The remaining challenged statement of Sergeant Wagner is the first. That statement was not made in response to questions about the scope of Sergeant Wagner's investigation. Rather, Boggs's attorney was asking Sergeant Wagner leading questions concerning the statements that Boggs had made to Sergeant Wagner. Sergeant Wagner answered one of the attorney's questions in the negative and, in addition, volunteered that one of Boggs's statements was untrue and that he did not find her credible. At that point in the trial, it was both unnecessary and improper for Sergeant Wagner to testify that he believed Boggs's statement to be untrue or to testify that he found Boggs's statement to be not credible. Sergeant Wagner could have answered Boggs's attorney's question without commenting on Boggs's truthfulness or credibility. The first challenged statement of Sergeant Wagner is similar to the challenged statement in *Ellert*, in which the supreme court held that the district court erred by admitting a police officer's testimony that the defendant lied when she gave the officer an exculpatory statement. 301 N.W.2d at 323. Thus, Boggs has established a plain error with respect to Sergeant Wagner's first challenged statement.

The third requirement of the plain-error test asks whether a plain error affected the appellant's substantial rights. *See Griller*, 583 N.W.2d at 740. An error affects a defendant's substantial rights "if the error was prejudicial and affected the outcome of the case." *Id.* at 741. An appellant bears a "heavy burden" in seeking to satisfy the third requirement of the plain-error test. *State v. Davis*, 820 N.W.2d 525, 535 (Minn. 2012) (quotation omitted).

In considering the prejudicial effect of Sergeant Wagner's first challenged statement, we assume that the second and third challenged statements were properly

admitted. The question is whether the first challenged statement affected the verdict even though jurors were aware of the second and third challenged statements, which were similar in nature. We believe that the admission of the first challenged statement likely had very little, if any, prejudicial impact on the juror's assessment of the admissible evidence. Boggs's attorney sought to elicit evidence that Sergeant Wagner did not believe the statements made to him by Boggs during his investigation. Boggs's attorney used that evidence in closing argument to cast doubt on the scope and thoroughness of Sergeant Wagner's investigation. The first challenged statement was consistent with the defense theory. In addition, the prosecutor did not mention the first challenged statement in closing argument. Furthermore, the prosecutor's primary argument was that the jury need not consider whether Boggs was credible because, even if jurors believed Boggs's testimony, they should find her guilty because her use of force was not reasonable. *See State v. Boldman*, 813 N.W.2d 102, 108 (Minn. 2012); *State v. Glowacki*, 630 N.W.2d 392, 399 (Minn. 2001). Thus, the plainly erroneous admission of the first challenged statement did not affect Boggs's substantial rights.

In sum, Boggs is not entitled to a new trial on the ground that Sergeant Wagner testified that he disbelieved Boggs's version of the incident.

**Affirmed.**