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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0269**

State of Minnesota,
Respondent,

vs.

Richard James Graf,
Appellant.

**Filed February 27, 2023
Affirmed
Wheelock, Judge**

Kandiyohi County District Court
File No. 34-CR-20-933

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

Shane D. Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this direct appeal from a judgment of conviction for felony fifth-degree assault, appellant argues that (1) the state's circumstantial evidence was insufficient to prove the element of venue, (2) the prosecution committed prosecutorial misconduct by misstating

the evidence and the law, and (3) the district court erred by admitting irrelevant and prejudicial evidence of appellant's drug use and other dangerous behavior. Because we conclude that the state's evidence was sufficient to prove venue, and neither the prosecutor's conduct nor the district court's admission of evidence was plain error, we affirm.

FACTS

Respondent State of Minnesota charged appellant Richard James Graf with felony violation of a harassment restraining order (HRO), threats of violence, and fifth-degree assault; and gross-misdemeanor fourth-degree assault and obstruction of legal process. The district court held a jury trial in July 2021. The following facts summarize the evidence presented at trial.

Graf lived in the upper level of a duplex residence. S.B. lived in the lower level of the duplex and had an HRO against Graf. On the evening of October 11, 2020, S.B. reported to law enforcement that Graf had violated the HRO.

S.B.'s testimony established the house number and street of her duplex residence and that she had an HRO against Graf, she called law enforcement on October 11, and officers responded to her address. Her testimony did not establish the reason she called law enforcement that day, however, and she testified that she could not recall the reason because she has mental-health issues that affect her memory.

A Willmar police officer testified that he was the first officer to arrive at the residence in response to S.B.'s report. He spoke with S.B. and determined that he had probable cause to arrest Graf for violating the HRO. Two other police officers arrived to

assist the first officer. The officers knocked on Graf's door, but Graf refused to open the door and instead yelled accusations about S.B. at the officers from inside his residence.

After Graf refused entry to law enforcement, the first officer drafted and obtained a warrant to enter the residence and arrest Graf. The other officers remained at Graf's apartment and continued to knock on Graf's door during the time it took to obtain the warrant.

Once they obtained the search warrant, the officers knocked on Graf's door again and announced that they had a warrant and would force the door open if Graf did not open the door. Graf refused to comply, and an officer pried open the door. The first officer entered Graf's residence with his taser drawn and told the second officer to have his firearm out to cover him.

The officers encountered Graf kneeling in his living room. The first officer testified that Graf saw the second officer's firearm and yelled, "Are you going to f-cking shoot me?" The officers ordered Graf to put his hands up. Graf yelled at the officers to stay away and then appeared to begin lifting himself off the floor "in a way that indicated that he was going to come towards [the officers] or resist." The first officer tased Graf, and the second officer holstered his firearm and moved towards Graf.

The first officer testified that the taser did not affect Graf, and Graf punched the second officer. Graf then continued to struggle with the officers as they moved further into the living room. The first officer stated that at some point during this struggle, Graf said, "Hey, whichever one of you I punched, I'm sorry." Officers were eventually able to handcuff Graf after spraying him with a substance similar to pepper spray. Approximately

one minute of the first officer's body-camera footage, which depicted the officers' entry into Graf's apartment and the beginning of the struggle, was admitted into evidence.

The second officer's testimony regarding their entry into Graf's apartment was consistent with the first officer's testimony. The second officer testified that he approached Graf to handcuff him after the first officer tased him. Graf stood up "chest to chest" with the second officer, at which point the second officer grabbed Graf and pushed him backwards. The second officer testified that Graf then punched him on the left side of the face.

At the close of the state's case, Graf moved for judgment of acquittal on all charges. The district court granted Graf's motion for acquittal of felony violation of an HRO and threats of violence because S.B.'s testimony was insufficient to establish the elements of those charges. The district court denied the motion for the three remaining counts. It also determined that although the HRO had been admitted into evidence as an exhibit, it would not provide a copy of the HRO to the jury during deliberations. The district court reasoned that it had granted judgment of acquittal on counts one and two, which were directly related to the HRO, and that the contents of the HRO could have a potentially prejudicial effect when the jury considered the remaining counts.

The jury found Graf guilty of fifth- and fourth-degree assault and obstruction of legal process based on his interactions with the officers. At a sentencing hearing in November 2021, the district court entered a judgment of conviction for fifth-degree assault and sentenced Graf to 30 months in prison.

Graf appeals.

DECISION

On appeal, Graf argues that his conviction must be reversed because the state did not present evidence sufficient to prove that his offenses took place in Kandiyohi County or, in the alternative, that he is entitled to a new trial because the prosecutor committed multiple forms of misconduct in her closing argument and the district court admitted prejudicial and irrelevant evidence. We review each issue in turn.

I. The state’s evidence was sufficient to prove venue in Kandiyohi County.

Graf first argues that the state’s evidence was insufficient to prove that the offenses took place in Kandiyohi County because the testimony presented at trial did not establish the city or county in which the offenses occurred. We disagree.

The state must prove beyond a reasonable doubt that an alleged crime occurred in the charging county because venue is an element of every criminal offense. Minn. Const. art. I, § 6 (“In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county or district wherein the crime shall have been committed”); *State v. Bahri*, 514 N.W.2d 580, 582 (Minn. App. 1994), *rev. denied* (Minn. June 15, 1994). However, the state is not required to prove venue by direct evidence. *Bahri*, 514 N.W.2d at 582. Rather, venue can be “determined by all the reasonable inferences arising from the totality of the surrounding circumstances.” *State v. Carignan*, 272 N.W.2d 748, 749 (Minn. 1978). Direct evidence of venue is not necessary “if evidence of location within a county is admitted and no objection is made when the case is submitted to the jury.” *State v. Larsen*, 442 N.W.2d 840, 842 (Minn. App. 1989).

Thus, circumstantial evidence may be sufficient to prove venue. *Id.*; *Bahri*, 514 N.W.2d at 582. We agree with Graf that the state provided only circumstantial evidence of the element of venue. Circumstantial evidence is evidence from which a fact-finder can “infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). “Circumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.*

When we review the sufficiency of direct evidence for a conviction, we “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). However, when a conviction is based on circumstantial evidence, appellate courts apply a heightened two-step circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

First, the reviewing court must identify the circumstances the state proved at trial. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted). Here, our inquiry is “not simply whether the inferences that point to guilt are reasonable,” because appellate courts “give no deference to the fact finder’s choice between reasonable inferences.” *Id.* (quotations omitted). We also look at the circumstantial evidence “as a whole” when completing this step of the analysis. *Id.*

We first identify the circumstances proved through S.B.'s and the officers' testimony. S.B. testified to the house number and street name at which she and Graf lived. The first officer testified that he was employed with the Willmar Police Department. He further testified that he was in uniform, on duty, and driving a marked squad car when he responded to S.B.'s call for service. The second officer similarly testified that he was employed with the Willmar Police Department and was in uniform and on duty when he responded to S.B.'s address that evening.

Second, we assess whether the circumstances proved at trial are consistent with the conclusion that the alleged offenses occurred in Kandiyohi County and inconsistent with a reasonable hypothesis to the contrary. Although there was no direct evidence that the address to which the officers responded is located in Willmar, a city in Kandiyohi County, the circumstantial evidence establishes that the Willmar Police Department received S.B.'s 911 call and that on-duty Willmar police officers responded to a specific service address in marked squad cars as a result. We conclude that these circumstances are consistent with the inference that the duplex where officers encountered and arrested Graf is located in Willmar, Kandiyohi County.

Furthermore, the circumstances proved are inconsistent with any reasonable hypothesis that the address is not located in Kandiyohi County. We came to a similar conclusion in *State v. Johnson*, 979 N.W.2d 483 (Minn. App. 2022), *rev. granted* (Minn.

Nov. 23, 2022)).¹ In *Johnson*, the state introduced evidence that an on-duty Waseca police officer responded to a false report of a crime. 979 N.W.2d at 501. We concluded that the evidence was sufficient to establish venue in Waseca County because the only reasonable hypothesis based on the circumstances proved was that the officer was present in Waseca County when he received the false report. *Id.* Here, there is no evidence from which to infer that the Willmar police officers left Kandiyohi County to respond to an address outside of their jurisdiction. Thus, the only reasonable hypothesis from the circumstances proved is that Graf’s offenses occurred within Kandiyohi County.

Graf relies on this court’s nonprecedential opinion in *State v. Brown*, No. A09-1920, 2010 WL 2733099 (Minn. App. July 13, 2010), to argue that a generic street address is not sufficient to establish venue.² Graf’s argument is unavailing because *Brown* is factually distinct from the instant case. The testimony in *Brown* described the scene of the offense “only as a Target store parking lot, without any designation as to which of the many Target stores was involved.” 2010 WL 2733099, at *1. A Crystal police officer later responded to the home of the complainant to record the complaint. *Id.* The evidence in *Brown* did not identify the address of the complainant’s home, nor did it establish that the offense

¹ The Minnesota Supreme Court granted review in *Johnson* to address an issue of statutory interpretation—the breadth of the element of venue as it pertains to falsely reporting a crime in Minn. Stat. § 609.505, subd. 1 (2020). The reasoning we used in *Johnson* to conclude that the circumstantial evidence was sufficient to prove venue in that case is not the subject of further review.

² We note that nonprecedential opinions of this court are not binding precedent, and we consider them only for their persuasive value. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

occurred in the responding officer's jurisdiction. *Id.* We concluded that the evidence was insufficient to prove venue because there was no direct evidence of venue and no "readily identifiable landmark to provide a location" for where the offense occurred. *Id.* In contrast, the testimony here established that the offense occurred at a specific address to which on-duty Willmar police officers responded immediately.

Reviewing the circumstantial evidence as a whole, we conclude that the evidence was sufficient to prove venue in Kandiyohi County.

II. Graf is not entitled to a new trial because the prosecutor did not plainly err in her closing argument.

Next, Graf argues that he is entitled to a new trial because the prosecutor committed misconduct by both misstating the evidence and misstating the law in her closing argument. Graf contends that the prosecutor misstated the evidence in three ways: (1) by suggesting that Graf posed a danger to himself, the police, and S.B.; (2) by "misrepresenting" the grounds for S.B.'s HRO against Graf; and (3) by stating that S.B. testified that she lived in Willmar. Graf argues that the prosecutor misstated the law by inaccurately describing both (1) the intent element of assault and (2) the role of the jury. Graf did not object to the prosecutor's statements at trial.

Appellate courts review unobjected-to statements of alleged prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 296 (Minn. 2006). The appellant bears the burden of satisfying the first two prongs of the plain-error test "to demonstrate both that error occurred and that the error was plain." *Id.* at 302. "An error is plain if it was clear or obvious," and plain error may be demonstrated

“if the error contravenes case law, a rule, or a standard of conduct.” *Id.* (quoting *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002)) (other quotation omitted).

Once the appellant demonstrates plain error, the burden shifts to the state “to demonstrate lack of prejudice; that is, the misconduct did not affect substantial rights.” *Id.* (citing Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998)). To demonstrate that the misconduct did not affect substantial rights, the state must show that there is not “a reasonable likelihood that the error actually impacted the verdict.” *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010). If the reviewing court finds that any one of the plain-error prongs is not satisfied, it need not address the others. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011). If the appellant satisfies the first two prongs of the plain-error test and the state fails to prove that the plain error did not affect the appellant’s substantial rights, then this court “assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *Griller*, 583 N.W.2d at 740.

A. The prosecutor’s alleged misstatements of the evidence were not plain error.

First, Graf argues that the prosecutor misstated the evidence by repeatedly referencing the danger Graf posed to himself, S.B., and law enforcement, exemplified by this passage from the prosecutor’s closing argument:

The officers need to know that Mr. Graf is not a danger to [S.B.]. And Mr. Graf isn’t starting at neutral here. A court has already said Mr. Graf was enough of a threat to [S.B.], don’t even contact her. She got a harassment restraining order. Don’t even contact me.

The officers need to know right then, that night, if there is a threat of danger to [S.B.]. She called the officers. They

have to follow through. They need to know that Mr. Graf is not a danger to that fragile, vulnerable woman.

Open the door, show us you're not a danger. Mr. Graf's actions aren't conveying I'm not a danger. He's not signaling I'm calm, everything's calm, no need to worry.

[The first officer] was concerned enough, he took the situation seriously enough to go down to his squad and type out a search warrant. I need to know tonight whether this is a—going to be a dangerous situation or not and to do that there has to be a conversation with Mr. Graf. The search warrant was granted by a court. [The first officer] wasn't the only one taking this situation seriously.

Graf argues that the record did not support the prosecutor's characterization of him as dangerous. He also argues that the prosecutor's argument was inflammatory because it “create[d] an impression of Graf's aggression versus S.B.'s vulnerability and stoke[d] the jury's fear of Graf as a highly dangerous and volatile person.”

Although a prosecutor's closing argument need not be “colorless,” it must be “based on the evidence produced at trial, or the reasonable inferences from that evidence.” *State v. Coleman*, 944 N.W.2d 469, 485 (Minn. App. 2020) (quotation omitted), *aff'd on other grounds*, 957 N.W.2d 72 (Minn. 2021). A prosecutor's argument must not “appeal to the passions of the jury” or “inflamm[e] or prejudic[e] the jury.” *State v. Mayhorn*, 720 N.W.2d 776, 786-87 (Minn. 2006).

Our review of the record and the prosecutor's closing argument as a whole leads us to conclude that Graf overstated the prosecutor's focus on his dangerousness. The prosecutor's statements regarding Graf's dangerousness were brief, and they were based on a reasonable inference that the officers were concerned about danger to themselves and

S.B. due to Graf's behavior after the officers responded to the address and knocked on Graf's door. S.B. testified that she "felt like she was going to be hurt physically" when she called police on the date of the alleged offense. The first officer testified that Graf was "yelling about [S.B.]," "mak[ing] accusations towards her about various things," and "sounded very agitated" when police tried to make contact with him. He further testified that he was concerned Graf could have "armed himself or barricaded a door or caused some sort of a danger" for the officers during the hour that Graf refused to answer his door.

Similarly, the second officer testified that he received a debrief when he arrived on the scene that Graf had yelled "threatening things" to S.B., which prompted S.B.'s call to law enforcement. The second officer testified that in the time it took to obtain a search warrant, Graf continued to move around his apartment and "occasionally . . . yell and scream." Thus, the prosecutor's suggestion that police were concerned by the situation was supported by the evidence and was not plain error.

Graf also argues that the prosecutor misstated the evidence when she stated, "A court has already said Mr. Graf was enough of a threat to [S.B.], don't even contact her. She got a harassment restraining order." He contends that the state did not introduce evidence regarding the process of obtaining an HRO or the showing a petitioner must make to obtain an HRO, and therefore, "the prosecutor's claim that a judge determined that Graf was a threat to S.B. was not based on evidence in the record." Graf further argues that the prosecutor's argument was not based on a reasonable inference from the evidence because some acts under the statutory definition of harassment are not inherently threatening. *See* Minn. Stat. § 609.748, subs. 1(a), 2 (2020). As we already stated, however, record

evidence established that Graf exhibited threatening behavior toward S.B. It is therefore a reasonable inference from the evidence that S.B. obtained the HRO due to Graf's threatening behavior. Although some of the prosecutor's comments may have approached misconduct, we are not persuaded that the alleged misconduct constitutes plain error.

Graf further argues that the prosecutor misstated the evidence when she stated in her closing argument that S.B. "confirm[ed] her address . . . in the city of Willmar." Graf is correct that none of the witnesses specifically testified that the address was located in Willmar. However, it is a reasonable inference from the record that S.B.'s address was located in Willmar. We therefore conclude that this statement does not rise to the level of plain-error misconduct.

For the state to meet its burden of showing that the statements did not affect Graf's substantial rights, it must show that there is not "a reasonable likelihood that the error actually impacted the verdict." *McDaniel*, 777 N.W.2d at 749; *accord State v. Davis*, 735 N.W.2d 674, 682-83 (Minn. 2007) ("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."). In determining whether prosecutorial misconduct impacted the verdict, this court "consider[s] the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Davis*, 735 N.W.2d at 682.

Even if the prosecutor engaged in plain-error misconduct by misstating evidence and inflaming the passion and prejudice of the jury, we conclude that the state met its

burden of showing that the prosecutor's misconduct did not significantly affect Graf's substantial rights in light of the factors we consider to determine whether prosecutorial misconduct impacted the verdict. *See id.* Here, there was strong evidence of Graf's guilt of fifth-degree assault involving the officers, the alleged misstatements were not pervasive, and the defense had an opportunity to respond to the alleged misstatements in its own closing argument. We conclude that the prosecutor's conduct does not warrant reversal.

B. The prosecutor's alleged misstatements of the law were not plain error.

Graf next argues that the prosecutor misstated the law in her rebuttal closing argument in two ways. First, Graf argues that the prosecutor misstated the role of the jury and appealed to the jury's moral standards by stating to the jury that it was "up to [the jury] to decide whether that was perfectly okay for Mr. Graf to punch that young officer." Second, Graf argues that the prosecutor misstated the law on the intent element of assault by stating:

[Defense counsel] argued there is no evidence of Mr. Graf's intention. There's no evidence of what Mr. Graf was thinking. True. You have to look at the circumstances surrounding this event. It still comes down to, you don't punch somebody in the face, that's a crime. That's assault.

Graf contends that this statement suggested the state did not need to prove Graf's general intent "to do the prohibited physical act of committing a battery." *State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016) (quotation omitted). We disagree.

A prosecutor's misstatement of the law may constitute misconduct. *See Strommen*, 648 N.W.2d at 690. In some instances, however, "corrective instructions by the court can cure prosecutorial error." *McDaniel*, 777 N.W.2d at 750; accord *State v. Race*,

383 N.W.2d 656, 664 (Minn. 1986) (stating that the district court's reiteration of the correct burden of proof cured prosecutor's improper comments).

The prosecutor made these statements in the context of discussing the circumstantial evidence of the intent element of assault. In reviewing the prosecutor's rebuttal closing argument as a whole, it is clear that these brief statements were meant to ask the jury to apply the evidence to the elements of the offense to determine Graf's guilt. We discern no plain error in these statements given that context.

Moreover, the alleged misstatements of the law did not affect Graf's substantial rights because they were isolated statements that were corrected when both the prosecutor and the district court correctly stated the role of the jury and the law regarding the intent element of assault at other points in the trial. The prosecutor correctly stated the elements of fourth- and fifth-degree assault, including the intent element, earlier in her closing argument. The district court similarly instructed the jury on the elements of assault and clarified that the role of the jury was to find whether Graf was guilty beyond a reasonable doubt. The district court further instructed the jury that the attorney's arguments were not evidence and should be ignored to the extent that they were inconsistent with the district court's instructions. Based on these curative instructions, we conclude that the prosecutor's limited statements did not affect the jury's verdict and therefore did not affect Graf's substantial rights.

III. Graf is not entitled to a new trial because the district court did not plainly err in its admission of testimony.

Finally, Graf argues that the district court erred by allowing two pieces of testimony. First, Graf argues that the district court erred by allowing testimony from S.B. that she and Graf were “using stuff together” and that she was “connecting with [Graf] and we were using together and then the meth didn’t help.” Second, Graf argues that the district court erred by allowing testimony from the first officer that the “worst case scenario” of Graf’s arrest “would be if he armed himself or barricaded a door or caused some sort of a danger for [the officers].” Graf contends that both pieces of testimony were irrelevant and prejudicial.

To be admissible, evidence must be relevant, meaning that it must have “any tendency to make the existence of any fact that is of consequence to the determination more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. Evidence may be inadmissible if it is prejudicial, in other words, “if its probative value is substantially outweighed by the danger of unfair prejudice.” Minn. R. Evid. 403.

Evidentiary rulings are discretionary with 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). However, when a defendant does not object to the admission of evidence at trial, appellate courts review its admission for plain error. *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). The plain-error standard requires the appellant to show that there was plain error that affected their substantial rights. *Griller*, 583 N.W.2d at 740. In showing that a plain error affected their substantial rights, the

appellant “bears a heavy burden of persuasion to show that the error was prejudicial and affected the outcome of the case.” *Bernhardt v. State*, 684 N.W.2d 465, 475 (Minn. 2004) (quotation omitted).

As an initial matter, we note that the prosecutor did not intentionally elicit the challenged testimony from S.B.; rather, S.B. spontaneously volunteered this information while responding to a different question. S.B.’s testimony regarding her previous interactions with Graf was also unclear. S.B. mentioned that she and Graf had been “using stuff together” and made a second reference to using together and to methamphetamine. Graf did not object to this testimony at trial. After S.B.’s first reference to drugs in her testimony, however, the district court interrupted S.B. to state, “I would instruct you to answer . . . only the questions being asked.” Furthermore, Graf did not request that the district court give a limiting instruction to the jury to disregard the testimony about S.B. and Graf using drugs.

S.B.’s testimony did not indicate when she and Graf had used drugs and did not suggest that Graf had used drugs on the night of the alleged offense. Defense counsel was able to impeach S.B.’s credibility by eliciting testimony that S.B.’s mental-health issues affected her ability to recall events. Thus, it is not likely that “[t]he jury could mistakenly believe that S.B. testified that Graf used drugs on the night of the alleged assault,” which Graf argues could have prejudiced the jury and affected the verdict.

Similarly, the prosecutor did not directly elicit the first officer’s testimony regarding the “worst case scenario” of Graf’s arrest. The first officer appeared to offer this testimony to explain why the officers were concerned about Graf’s refusal to open the door and the

possibility that Graf would not comply with arrest. The state argues that this testimony was relevant because it countered the defense's trial strategy of portraying "law enforcement as overzealous and Graf's actions as an involuntary response" to the surprise of officers entering his house. The first officer's testimony also moved on quickly from the "worst case scenario" to describing the actual arrest process. Thus, it is unlikely that the hypothetical "worst case scenario" testimony was sufficiently prejudicial to affect the outcome of the case.

We discern no plain error in the district court's admission of S.B.'s and the first officer's testimony. We further conclude that Graf did not meet the "heavy burden" of showing that the district court's admission of the testimony was prejudicial and affected the outcome of the case.

Affirmed.