STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0368

State of Minnesota,
Respondent,

vs.

Leah Racquel Anderson,
Appellant.

Filed January 17, 2023
Affirmed
Frisch, Judge

Polk County District Court
File No. 60-CR-20-892

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Greg Scanlan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Reyes, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following her conviction for a methamphetamine-related crime involving children, appellant argues that there was insufficient evidence to sustain the conviction, that the

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

district court erred in admitting certain evidence, and that she received ineffective assistance of counsel. Because the evidence to convict appellant was sufficient, the admission of the challenged evidence did not affect her substantial rights, and appellant did not meet her burden to establish ineffective assistance of counsel, we affirm.

FACTS

The following facts were elicited at a jury trial. Appellant Leah Racquel Anderson was scheduled to have a court-ordered visit with her son (the child) to occur on May 16, 2020. Anderson had arranged to meet the child at a predetermined pick-up location and bring him to her home. The child had been staying with his grandmother for several months because he did not feel safe living with Anderson. At the time of trial, the child was 14 years old.

On May 16, grandfather brought the child to the predetermined location where Anderson agreed to pick up the child. The child waited for Anderson for 15 to 30 minutes, but Anderson never arrived. Upon the child's request, grandfather brought the child directly to Anderson's home. Grandfather and the child believed Anderson was not living with anyone else at that time.

When the child and grandfather arrived at Anderson's residence, they saw her car parked in the driveway with the door open. The front door of Anderson's home was partially open. The child went inside the residence and observed something "abnormal" on a blue rug about two feet from a recliner near the front door. The child walked past the object and found Anderson sleeping on the child's bed. The child unsuccessfully tried to wake Anderson by shaking her and pouring cold water on her. The child told grandfather,

"Go ahead and go," and that Anderson was sleeping but the child could not wake her. Grandfather left and notified grandmother of the situation.

The child inspected the object on the floor and determined that it was a pipe lying in an open case. The child waited for Anderson to wake up but eventually called grandmother and asked to be collected from Anderson's home. Grandmother told the child that she could not collect the child because the child was required to be at Anderson's residence for a court-ordered, five-hour visit. The child called his guardian ad litem (GAL) to ask to leave with grandmother. The GAL gave the child permission to leave Anderson's home. The child then informed the GAL of the discovery of a pipe in Anderson's home and provided a description of the same. The GAL told the child to pack up the pipe in the case and instructed the child to "get out of there." The child used bare hands to zip the case closed. The child placed the closed case in their sweatshirt pocket. The child called grandmother and started walking into town. The GAL also called grandmother, informed grandmother that the child had discovered a pipe, and emphasized that grandmother needed to get the child from Anderson's home. The child was at Anderson's house for about one and a half to two hours. The child did not observe evidence that anyone else had been in the residence. Anderson did not wake up while the child was in the home.

Grandmother picked the child up in the middle of town. The child showed grandmother the pipe and told her that the GAL provided instructions to bring it to the police. Grandmother looked at the pipe and agreed to deliver it to the police. Grandmother and the child gave the pipe to a deputy, who then took pictures of the pipe and confiscated it. The child gave a statement to the deputy.

Investigation

The deputy recognized the pipe as one that is commonly used to smoke methamphetamine. The pipe had a white residue on the inside.

The deputy went to Anderson's home to speak with her. The deputy asked Anderson if she would be willing to open the front door, which she did. Without entering Anderson's residence, the deputy observed the blue rug where the child found the pipe.

The deputy returned to the police station and performed an unofficial field test to confirm that the residue in the pipe was methamphetamine. The test was positive.

The state charged Anderson with a methamphetamine-related crime involving children in violation of Minn. Stat. § 152.137, subd. 2(a)(4) (2018), and a fifth-degree controlled-substance crime in violation of Minn. Stat. § 152.025, subd. 2(1) (2018).

At a later date, the Minnesota Bureau of Criminal Apprehension (BCA) conducted further testing on the pipe. The BCA test also produced a positive result for methamphetamine.

Procedural Posture

At the pretrial conference, defense counsel informed the district court that the defense would stipulate to "the report" from the BCA. The BCA analyst who prepared the report was not available to testify on the scheduled trial date, and Anderson did not want to continue the trial to a date when the analyst would be available to testify. Before jury selection began, defense counsel confirmed that Anderson stipulated to the "lab results" from the BCA to avoid a delay in the trial date. Anderson personally agreed to stipulate to the lab results.

At trial, the state introduced an exhibit containing the BCA lab results. The exhibit consisted of four pages. The first page of the exhibit contained the test results, and the remaining pages of the exhibit contained chain-of-custody documents, including an evidence submission form and a laboratory-analysis request. The exhibit was received without objection.

The jury found Anderson guilty on both counts. The district court stayed imposition of a sentence and ordered a 45-day period of electric home monitoring with authorized work release and supervised probation for five years with conditions.

Anderson appeals.

DECISION

Anderson argues that her conviction is not supported by sufficient evidence, that admission of certain chain-of-custody evidence was erroneous, and that she received ineffective assistance of counsel. We address each argument in turn.

I. The evidence was sufficient to convict Anderson of a methamphetamine-related crime involving children.

Anderson argues that the evidence was insufficient to convict her of a methamphetamine-related crime involving children because the evidence did not show that she (1) knowingly engaged in storing methamphetamine or (2) knowingly expected the presence of the child. We disagree.

Anderson was convicted of a methamphetamine-related crime involving children pursuant to Minn. Stat. § 152.137, subd. 2(a)(4):

> (a) No person may *knowingly engage in* any of the following activities in the presence of a child or vulnerable adult;

> in the residence of a child or a vulnerable adult; in a building, structure, conveyance, or outdoor location *where a child* or vulnerable adult *might reasonably be expected to be present*; in a room offered to the public for overnight accommodation; or in any multiple unit residential building:
>
> . . . .
>
> (4) *storing* any methamphetamine paraphernalia.

(Emphasis added.) Whether the evidence was sufficient to sustain a conviction under this statute turns on its interpretation, which presents a question that we review de novo. *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). "When interpreting a statute, we seek to ascertain the Legislature's intent." *State v. Morgan*, 968 N.W.2d 25, 30 (Minn. 2021). We first determine whether language in the statute is ambiguous. *Id.* A statute is ambiguous if it is "susceptible to more than one reasonable interpretation." *Id.* If the statute is unambiguous, we apply the plain meaning. *Id.*

We first address Anderson's arguments regarding the interpretation of statutory language and then analyze the sufficiency of the evidence at trial. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017).

Storing

Anderson argues that the word "storing" could mean either "the discrete act of putting away" (discrete usage) or "the ongoing act of keeping" (ongoing usage), but that as used in this statute, the word storing means the discrete act of putting away. We disagree.

As a threshold matter, we disagree with Anderson's interpretation of the word "storing" as used in this statute. In *State v. Maack*, we interpreted the plain meaning of the

act of storing under Minn. Stat. § 152.137, subd. 2(a)(4), as "keeping . . . for future use." 921 N.W.2d 790, 793-94 (Minn. App. 2018). We concluded that the language of the statute was unambiguous because to "store means to keep (goods, etc.) in safekeeping for future delivery in an unchanged condition and to reserve or put away for future use." *Id.* (quotations and citations omitted). We concluded that the statute unambiguously "prohibits a person from participating and taking part in the activity of keeping methamphetamine paraphernalia for future use." *Id.* at 794.

Anderson nevertheless argues that the statutory term "storing" unambiguously means a discrete act of putting away identified items for future use and does not mean to engage in an act of keeping for future use. Anderson cites no authority to support this interpretation. And this argument is contrary to our holding in *Maack*, in which we defined the term "storing" to include the ongoing usage "keeping . . . for future use" and concluded that the evidence there was insufficient because the defendant's mere knowledge that another person stored methamphetamine paraphernalia in the home and the defendant's limited use of that paraphernalia did not amount to engaging in the activity of keeping the methamphetamine for future use within the meaning of the statute. *Id.* at 794-95.

Anderson also asserts that the discrete-usage interpretation must apply because it effectuates a legislative intent to enable prosecution of those who abandon methamphetamine paraphernalia. Anderson cites no authority in support of this proposition.

Anderson further suggests that defining storing to mean the ongoing act of keeping could render the statutory language "in the presence of a child" surplusage because (1) the

purpose of that language is to prevent the child from coming into contact with the criminalized items and (2) it would permit a situation where a person is liable because they stored methamphetamine paraphernalia in the presence of a child and where a child might reasonably be expected to be present. First, Anderson cites no authority in support of her argument that the legislature intended the language "in the presence of a child" to prevent the child from coming into contact with the criminalized items. The statute contains no requirement that the child personally view the prohibited item for liability to attach. Second, we do not read "in the presence of a child" as mutually exclusive of other conditions that could give rise to liability. We can envision a scenario where methamphetamine is kept for future use in the presence of a child, in the residence of a child, and where a child might reasonably be expected to be present. But we can also envision a scenario where methamphetamine paraphernalia is kept for future use at a place where a child may reasonably be expected to be present but the child is not actually physically present. The fact that certain circumstances could give rise to multiple theories of liability does not necessarily render the meaning of the phrases identical. *Cf. State v. Friese*, 959 N.W.2d 205, 211 (Minn. 2021) (rejecting the defendant's interpretation of "expose to" as "physically subjected to" under the canon of surplusage because the supreme court could not envision a scenario in which a child would be "physically subjected to" methamphetamine in a way not otherwise described by the statute). We also note that "storing" is not the only action that may result in liability under the statute. "Manufacturing" and "attempting to manufacture" in the presence of a child also give rise to liability. Minn. Stat. § 152.137, subd. 2(a)(1) (2018). Thus, the binding interpretation

of storing in *Maack* does not render the statutory language "in the presence of a child" surplusage in the context of the statute as a whole. *State v. Riggs*, 865 N.W.2d 679, 683 (Minn. 2015) (recognizing courts construe a statute as a whole to determine if it is ambiguous and interpret its language to give effect to all of its provisions).

Thus, consistent with *Maack*, the act of storing under Minn. Stat. § 152.137, subd. 2(a)(4), unambiguously means to keep for future use.

Expected Presence of a Child

Anderson next argues that the statutory terms "expected," read with "knowingly" means that "the state must prove the defendant was aware of or believed in the probable or anticipated presence of a child." Anderson further argues that "knowingly" requires a continued awareness of the planned encounter.

We agree with Anderson's interpretation that the phrase "knowingly expect the presence of a child" means "aware of or believed in the probable or anticipated presence of a child." *See State v. Watkins*, 840 N.W.2d 21, 29 (Minn. 2013) (defining knowingly as a derivative of "know," which means "to perceive directly; grasp in mind with clarity or certainty" (quotation omitted)); *State v. Gunderson*, 812 N.W.2d 156, 160-61 (Minn. App. 2012) (applying the Model Penal Code definition of "knowingly"); *The American Heritage Dictionary of the English Language* 623 (5th ed. 2011) (defining "expect" as "[t]o look forward to the probable occurrence or appearance of"). This statutory language is unambiguous.

But Anderson's assertion that such an interpretation necessarily means that she could not have knowingly expected the presence of a child while asleep is not reasonable.

The statute does not require uninterrupted conscious awareness. The fact that Anderson was asleep at the time the child discovered her in the residence does not necessarily negate a conclusion that she was aware of or believed in the probable or anticipated presence of the child. The authority cited by Anderson does not require continued, uninterrupted conscious awareness for liability to exist under the statute. *See Gunderson*, 812 N.W.2d at 160-61 (reasoning that a felony-level violation of a harassment restraining order occurs when an individual "knowingly violates" the harassment restraining order and, applying the Model Penal Code definition of "knowingly," that requires that a person is aware that the violative action was prohibited). And "[o]ur rules of statutory interpretation forbid adding words or meaning to a statute that are purposely omitted or inadvertently overlooked." *Dupey v. State*, 868 N.W.2d 36, 40 (Minn. 2015) (quotation omitted). Thus, we are not persuaded that the statute requires proof beyond a reasonable doubt of the continuous and uninterrupted awareness of the expected presence of a child by a conscious person.

Having defined the relevant statutory terms, we turn to Anderson's argument regarding the sufficiency of the evidence underlying her conviction.

Sufficiency of Evidence

The state relied on circumstantial evidence to prove that Anderson knowingly stored methamphetamine paraphernalia in a place where a child might reasonably be expected to be present. When "the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict," we apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). "[C]ircumstantial evidence always requires an

inferential step to prove a fact that is not required with direct evidence." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017).

Under the circumstantial-evidence standard of review, we conduct a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). We first identify the circumstances proved by the state. *Id.* In so doing, we defer to the jury's acceptance of the circumstances proved and rejection of evidence conflicting with those circumstances. *Id*. at 598-99. We "construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the [s]tate's witnesses and disbelieved the defense witnesses." *Id.* at 599 (quotation omitted). "The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotation omitted). In making this determination, we view the circumstances proved "not as isolated facts, but as a whole," and independently examine the reasonableness of all inferences rather than deferring to the jury's choice between reasonable inferences. *Id.*

To sustain a conviction for a methamphetamine-related crime involving children under the statute, the state was required to prove beyond a reasonable doubt that (1) Anderson knowingly stored methamphetamine paraphernalia; (2) Anderson knowingly stored the methamphetamine paraphernalia where a child might reasonably be expected to be present; and (3) Anderson's act took place on or about May 16, 2020, in Polk County. Anderson disputes the first two elements.

The circumstances proved at trial are: (1) pursuant to an established plan, Anderson was to pick up the child at a predetermined location and return with the child to her home;

(2) Anderson did not appear at the predetermined location and the child's grandfather brought the child to Anderson's home; (3) the child visited Anderson pursuant to a court-ordered visit; (4) Anderson was believed to own her home and live alone; (5) Anderson was the only person in the home when the child arrived; (6) Anderson was asleep in the child's bed when the child arrived at Anderson's home; (7) upon arrival, the child found a pipe in the living room in Anderson's home; (8) the pipe appeared used and had a white residue inside; (9) the child contacted the GAL and followed instructions to pack up the pipe and bring the pipe to police; and (10) the pipe tested positive for methamphetamine. Together, these circumstances are consistent with guilt and are inconsistent with any rational hypothesis other than that of guilt. Anderson knowingly stored methamphetamine paraphernalia at the same time and place she was scheduled to have a court-ordered visit with the child. The evidence was therefore sufficient to sustain the conviction.

II. Any evidentiary error did not affect Anderson's substantial rights.

Anderson argues that she is entitled to a new trial because the district court erred in admitting an exhibit containing testimonial hearsay statements in violation of her confrontation rights.

The state introduced the exhibit Anderson now challenges. The entire exhibit consisted of four pages. The report on the examination of physical evidence containing the BCA lab results and the evidence submission form comprised the first three pages of the exhibit. The remaining page of the exhibit consisted of a laboratory-analysis request. The evidence submission form contained information regarding the offense, the personnel investigating the offense, Anderson, the paraphernalia to be tested, and a brief summary of

the case and special circumstances. Anderson stipulated to the admission of the BCA lab results, but she did not personally stipulate to the admission of the remainder of the information contained within the multi-page exhibit, including a statement purporting to summarize a confession.[1] Anderson now specifically objects to three portions of the evidence submission form: the FBI number for Anderson; a summary note that reads, "The suspect was later questioned and admitted to having the pipe in her house which resulted in new charges. Jury trial date is scheduled please complete confirmatory testing"; and the response "no" to the question "Is this a first offense being charged as a gross misdemeanor?" In other words, Anderson contends that this exhibit supplied the jury with testimonial and hearsay evidence of her possession of the pipe and her criminal history.

Anderson also contends that admission of the form was plain-error prosecutorial misconduct. Anderson asserts that the prosecutor offered evidence that they knew or should have known was false and inadmissible.

Anderson did not object to the admission of the evidence. The state agrees that admission of the evidence was erroneous but the parties dispute whether we review the erroneous admission of the evidence for plain error or under a modified plain-error test. When reviewing for plain error, we consider if "(1) there is error, (2) the error is plain, and (3) the error affects substantial rights." *State v. Carridine*, 812 N.W.2d 130, 142 (Minn.

[1] We note that the state argues that Anderson waived her right to appellate review of this issue when she stipulated to the admission of the BCA lab results. The record reflects that the BCA lab results were a distinct document that made up only a portion of that admitted at trial. Because Anderson did not stipulate to the evidence that she now challenges, she did not waive her right to appellate review.

2012). "If the defendant establishes all three factors, we consider a fourth: whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id*. (quotation omitted). But if there are allegations of prosecutorial misconduct, we apply a modified plain-error test. *Id.* at 146. Under the modified plain-error test, the defendant must show that the prosecutorial misconduct was plain error, such that it "contravenes case law, a rule, or a standard of conduct." *Id.* (quotation omitted). Then, the burden shifts to the state to show that the error did not affect the defendant's substantial rights. *Id.*

Although we do not consider the prosecutor to have committed affirmative misconduct in this case, we need not decide whether the plain error or modified plain-error test applies, because, in any event, the erroneous admission of the evidence did not affect Anderson's substantial rights. When determining "whether the error affected substantial rights, we ask whether the error was prejudicial and affected the outcome of the case." *Id.* at 142. "[W]e consider 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." *State v. Mosley*, 853 N.W.2d 789, 803 (Minn. 2014) (quotations omitted).

In *Mosley*, the Minnesota Supreme Court applied the modified plain-error test and placed the burden on the state to show that there was "no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict." *Id.* at 801 (quotation omitted). The state introduced an exhibit with graphic sexual references and potential references to prostitution. *Id.* at 802-03. The supreme court reasoned that the state established that there was no reasonable likelihood that admission

of the evidence affected the defendant's substantial rights because the evidence against the defendant was strong, the prosecutor did not rely on or elicit testimony about the content of the messages, the prosecutor focused solely on the admissible part of the evidence in the exhibit, and there was no evidence that the fact-finder relied on the problematic evidence in its decision. *Id.* at 803.

We read the facts of this case to be analogous. Like the circumstances in *Mosley*, we assume that the exhibit contained information that should have been redacted. But the other evidence in the case was strong and the improper evidence consisted of a small portion of the totality of the evidence. This improper evidence was never mentioned during the trial, and there is no indication that the jury relied on it in reaching its verdict. The overwhelming evidence introduced at trial related to Anderson's possession or awareness of the pipe in her home. The child's uncontroverted testimony about where the pipe was found, which the deputy corroborated, was duplicative of the inadmissible material erroneously introduced at trial. The prosecutor did not elicit testimony about the improper evidence and made no mention of it in opening or closing arguments. The prosecutor focused solely on the stipulated portion of the exhibit and did not elicit testimony or suggest in opening statement or closing argument that Anderson confessed to having the pipe in her home or had a criminal history. And Anderson suggests that the prosecutor may have been unaware of the improper evidence. Finally, there is no evidence that the jury relied on the objectionable material in convicting Anderson. We therefore conclude that the erroneous admission of the evidence did not affect Anderson's substantial rights and no new trial is warranted.

III. Anderson failed to establish that she received ineffective assistance of counsel.

Anderson argues that she received ineffective assistance of counsel because her trial counsel either (1) did not read the exhibit containing the impermissible evidence, or (2) was aware of the inadmissible evidence and did not object to or contest its content. We review ineffective-assistance-of-counsel claims de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

Criminal defendants have a constitutional right to the assistance of counsel. U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. This right is the "right to the effective assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quotation omitted). We analyze ineffective-assistance-of-counsel claims under a two-prong test set forth in *Strickland*. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). To prevail on such a claim, the appellant bears the burden of demonstrating that (1) counsel's representation fell below an objective standard of reasonableness and (2) there was a reasonable probability that, but for counsel's errors, the result of the proceedings would have been different. *Id.* (relying on *Strickland*, 466 U.S. at 694). We need not address both prongs of the test if one prong is determinative. *Id.*

Under the first prong, the appellant must show that counsel's "representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. We assign "a strong presumption that counsel's performance was reasonable." *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). "An attorney's representation meets the objective standard of reasonableness if the attorney exercises the customary skills and diligence that a reasonably competent attorney would exercise under the circumstances. Strategic choices made by an

attorney after a thorough investigation of the facts and law are virtually unchallengeable." *Swaney v. State*, 882 N.W.2d 207, 217 (Minn. 2016) (quotation and citation omitted).

Anderson's argument that her trial counsel failed to read the exhibit containing the objectionable evidence is speculative and not supported by the record on appeal. But even assuming that counsel's performance fell below an objective standard of reasonableness, Anderson failed to meet her burden to show "a reasonable probability that, but for counsel's [alleged] errors, the result of the proceedings would have been different." *Peltier*, 946 N.W.2d at 372 (quotation omitted). "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome of the case." *Swaney*, 882 N.W.2d at 217 (quoting *Strickland*, 466 U.S. at 694). Anderson did not carry her burden to establish a reasonable probability that the outcome would have been different because, as set forth above, the objectionable material was cumulative of direct evidence introduced at trial that the pipe was found by the child in Anderson's home.

Affirmed.