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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1485**

State of Minnesota,
Respondent,

vs.

Delaney Rayshawn Burks,
Appellant.

**Filed September 9, 2024
Affirmed
Ede, Judge**

Hennepin County District Court
File No. 27-CR-21-18310

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

Mary F. Moriarty, Hennepin County Attorney, Brittany D. Lawonn, Senior Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ede, Presiding Judge; Cochran, Judge; and Wheelock,
Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this direct appeal from a third-degree criminal-sexual-conduct conviction
following a bench trial, appellant argues that we should reverse and remand for a new trial

because the district court plainly erred by admitting certain prior statements by the complainant and her cousin. We affirm.

FACTS

Respondent State of Minnesota charged appellant Delaney Rayshawn Burks with one count of third-degree criminal sexual conduct, in violation of Minnesota Statutes section 609.344, subdivision 1(b) (Supp. 2021). Burks waived his right to a jury and the case proceeded to a bench trial in April 2023.

The district court heard testimony from several witnesses, including: the complainant, U.P.; the complainant's cousin, B.B.; a forensic nurse examiner; a police officer who responded to the crime scene; and Burks. The district court also received several exhibits into evidence, including a recording of U.P.'s interview with a detective and law enforcement body camera footage. That footage depicts statements that U.P. and B.B. provided to officers on the night of the incident. This factual summary is based on the trial evidence.

In 2021, U.P. was living with B.B. and two of B.B.'s children in B.B.'s two-bedroom apartment. U.P. slept on an air mattress in the living room. On a late September evening, B.B. and U.P. were preparing for bed after a night out. U.P. had been drinking cognac and smoking marijuana; although she described herself as "pretty intoxicated," U.P. could still walk and talk, and she testified at trial that she had a clear memory of everything that had occurred.

B.B. received a call from Burks, whom she had met several years before the incident via a social media application. After meeting online, B.B. and Burks exchanged numbers

and other social media contact information, and they sporadically communicated thereafter. During their phone call on the evening of the incident, Burks told B.B. that he needed somewhere to shower and sleep. B.B. agreed to allow Burks to do so at her apartment. B.B. believed that U.P. knew Burks was coming to the apartment because B.B. “had [Burks] on speaker phone,” U.P. asked B.B. who was on the phone, and B.B. “told her who he was.” Following this phone conversation, U.P. went into the living room to sleep.¹

After Burks arrived, he and B.B. chatted in B.B.’s bedroom. Burks asked B.B. if he could shower, and B.B. provided Burks with a washcloth and a towel. Burks went into the bathroom and closed the door to B.B.’s room behind him as he left. After B.B. heard the shower running, she went to sleep.

Feeling “groggy,” U.P. awoke in the living room and noticed that someone had removed her shorts. She felt “like oral sex [was] being performed” on her, followed by a penis inside her vagina and Burks’s body on top of hers. U.P. heard Burks whisper in her ear, “You know who I am. I don’t want to take advantage of you.” At that point, U.P. “jumped up in [her] sleep” because she did not know who Burks was and did not consent to having sexual intercourse with him. U.P. was confused. She and Burks then got up from the air mattress, and B.B. awoke to both U.P. and Burks running into B.B.’s bedroom.

A heated verbal exchange ensued between U.P. and B.B., and the two cousins began to physically fight each other. Burks ran out of the apartment, and U.P. and B.B. chased

¹ U.P. testified that she did not know that Burks was coming over and that she immediately went to bed after she arrived at B.B.’s apartment.

after him. But U.P. and B.B. again began to argue and their altercation resumed, which prevented them from catching up to Burks. B.B. later called 911 to report the incident. After police responded, B.B. was cooperative and spoke with law enforcement. B.B. also allowed officers to collect U.P.'s bed sheets as evidence. U.P. likewise discussed the incident with law enforcement at the scene. She then went to the hospital and underwent a sexual assault examination.

Burks testified to a different version of events. According to Burks, he had a video call with both B.B. and U.P. before going to B.B.'s apartment on the night of the incident. He claimed that it was U.P. and not B.B. who had invited him to come over. Burks said that, after arriving, he went directly to B.B.'s bedroom and spoke with B.B. for some time. He stated that he eventually asked B.B. where U.P. was and that B.B. told him that U.P. was in the living room. Burks denied requesting to shower.

Burks testified that he went into the living room, where he found U.P. lying in bed looking at her cellphone. Burks said that he and U.P. began to flirt with each other and smoked some marijuana. He stated that U.P. eventually slid her shorts down and he performed oral sex on her. According to Burks, they began to kiss and U.P. placed Burks's penis into her vagina. Burks claimed that, after a few seconds, U.P. asked Burks if he had a condom, and Burks told her that he did not. Burks testified that U.P. insisted that they stop having sexual intercourse after expressing concerns about becoming pregnant and about B.B. or the mother of Burks's child finding out. He said that U.P. then heard a noise and suspected that B.B. was coming out of her bedroom, after which U.P. told Burks that he "had her eff'd up" and to "watch what she do."

Burks testified that he and U.P. went into B.B.'s bedroom, where B.B. was asleep, and that he and U.P. were arguing. He stated that U.P. told B.B. that Burks needed to leave the apartment and that, when B.B. asked U.P. why, U.P. "said . . . in a calm, soft voice, 'He raped me.'" According to Burks, B.B. did not believe U.P. He stated that, instead of immediately calling 911, U.P. called her boyfriend. Burks claimed that U.P. also became angry with B.B. and "attacked her," after which Burks left the apartment. Burks testified that he stood outside the building before leaving the scene because he believed that U.P. or B.B. had called the police. He said that he saw B.B. and U.P. remain in the building's front entrance and that they got into another fight. Burks stated that, although U.P.'s boyfriend arrived, law enforcement did not. He testified that, after about 30 minutes, he left.

Following the bench trial, the district court filed a written "Verdict of Guilty" and accompanying memorandum. The district court found Burks guilty of third-degree criminal sexual conduct and later sentenced him to 77 months in prison.

Burks appeals.

DECISION

Burks seeks a new trial, asserting that the district court plainly erred by admitting U.P.'s and B.B.'s prior statements because U.P.'s prior statements were needlessly cumulative and B.B.'s prior statements were inadmissible hearsay. Contending that "[t]his he said, she said case came down to credibility[.]" Burks maintains that these claimed evidentiary errors affected his substantial rights because they had a significant effect on the verdict.

At trial, Burks did not object to the admission of the prior statements that he challenges in this appeal. “Ordinarily, a defendant’s failure to object to an error during the trial forfeits appellate consideration of the issue.” *State v. Epps*, 964 N.W.2d 419, 422 (Minn. 2021). But appellate courts have discretionary authority to consider an issue on appeal if there is (1) error, (2) that is plain, and (3) that error has affected the appellant’s substantial rights.² *See id.* at 422-23. “An error is plain if it is clear and obvious; usually this means an error that violates or contradicts case law, a rule, or an applicable standard of conduct.” *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). To satisfy the third prong, the error must be prejudicial and affect the outcome of the case. *Id.* “Erroneously introduced evidence affects the defendant’s substantial rights if it significantly influences the verdict by going to a critical issue at the trial or is central to the prosecution’s case.” *State v. Vasquez*, 912 N.W.2d 642, 650 (Minn. 2018). “If the [appellant] fails on any one of the prongs, [an appellate court] need not consider the others.” *State v. Smith*, 932 N.W.2d 257, 271 (Minn. 2019).

We first address Burks’s arguments about the admission of U.P.’s prior statements before turning to his contentions as to B.B.’s prior statements.

I. The district court did not plainly err in admitting U.P.’s prior statements.

In support of his position that U.P.’s prior statements were “needlessly cumulative,” Burks argues that “it was wholly unnecessary” for U.P.’s version of events “to be presented

² “If these three prongs are met, the appellate court then assesses whether it should address the error to ensure the fairness and the integrity of the judicial proceedings.” *Epps*, 964 N.W.2d at 423 (quotation omitted).

again and again to the district court through the witnesses' testimony and two separate recordings." We disagree.

Generally, "[a]ll relevant evidence is admissible, except as otherwise provided" by law. Minn. R. Evid. 402. Evidence is relevant if it tends to make the existence of any fact of consequence more or less probable than it would be without the evidence. Minn. R. Evid. 401; *see also State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005) ("Evidence is relevant and has probative value when it, in some degree, advances the inquiry."). "A fact is relevant if, when taken alone or in connection of other facts, [it] warrants a [fact-finder] in drawing a logical inference assisting, even though remotely, the determination of the issue in question." *Schulz*, 691 N.W.2d at 478. "The convincing power of that inference is for the [fact-finder] to determine." *Id.*

"Although relevant, evidence may be excluded if its probative value is substantially outweighed . . . by considerations of . . . needless presentation of cumulative evidence." Minn. R. Evid. 403; *see also State v. Amos*, 347 N.W.2d 498, 502 (Minn. 1984) (identifying circumstances under which a "trial judge could reasonably have excluded the evidence in question as cumulative or unnecessary to the case, or as confusing on the precise issues in the case"). But evidence is not needlessly cumulative when it provides context that cannot be fully reproduced by asking witnesses questions. *See State v. Valentine*, 787 N.W.2d 630, 640 (Minn. 2010) (concluding that recordings of telephone calls that the complainant had made were not "unduly cumulative" and did "not duplicate other evidence" because "[t]he recorded messages include[d] the tone of [the complainant's] voice, which [could not] be fully reproduced by asking witnesses questions about what the messages said").

Here, the state charged Burks with sexually penetrating U.P. while knowing or having reason to know that she was “mentally impaired, mentally incapacitated, or physically helpless[.]” Minn. Stat. § 609.344, subd. 1(b). At trial, it was undisputed that Burks had sexually penetrated U.P. But the district court determined that there was “no agreement” between the parties as to whether U.P. was physically helpless, or whether Burks knew or had reason to know that U.P. was physically helpless.

In particular, U.P. testified that she was asleep when Burks assaulted her. She recalled feeling “like oral sex [was] being performed when [she] first got woke up” and that Burks’s penis was inside her vagina and his body was on top of hers. In his testimony, Burks admitted performing oral sex on U.P. but stated that U.P. “slid her shorts down” before he did so. Burks also stated that U.P. “grabbed [Burks’s] private part and put it in” her vagina. Thus, the district court was tasked with “consider[ing] other aspects of the testimony for clues to determine which story [was] credible.”

Without objection from the defense, the state presented U.P.’s account of the incident through: (1) testimony from a police officer who responded to the 911 call; (2) police body camera footage, which included a 13-minute interview with U.P. at the scene; (3) testimony from the forensic nurse examiner who performed the sexual assault exam; and (4) a 25-minute video of U.P.’s interview with a detective.³ Each of these items provided context that could not be fully reproduced by questioning U.P. at trial.

³ Based on our independent review of the record, we accept Burks’s concession that these prior statements “were likely admissible as exceptions to the general prohibition on hearsay.” *See* Minn. R. Evid. 801(d)(1)(B) (providing that “[a] statement is not hearsay if . . . [t]he declarant testifies at the trial . . . and is subject to cross-examination concerning

More specifically, testimony from the responding officer—as well as the corresponding body camera footage—corroborated U.P.’s testimony and provided context for U.P.’s emotional state when she first reported the incident to law enforcement. The officer testified that U.P. “was very agitated and upset”; the body camera footage confirms that testimony.

The forensic nurse examiner likewise testified about U.P.’s demeanor during the sexual assault exam, noting that “[U.P.] was withdrawn, and she said that she was feeling very shaky.” The examiner also stated that U.P.’s behavior was consistent with someone affected by “a traumatic event[.]” The fact that U.P.’s report of the incident to the forensic nurse examiner is congruent with her trial testimony and prior statements to law enforcement is probative of her credibility.

Lastly, the 25-minute recording of U.P.’s interview with the detective also provided context for relevant interactions between U.P., B.B., and Burks during the incident. During the interview, U.P. told the detective that she did not know how Burks knew that she was sleeping in the living room and that she suspected that B.B. had told him. U.P. also told the detective that, as the incident was occurring and she was waking up, she at first believed that the person having sex with her could have been her boyfriend, a fact that she did not recall at trial.

We therefore conclude that U.P.’s prior statements were not needlessly or unduly cumulative but rather highly probative in establishing U.P.’s credibility, particularly

the statement, and the statement is . . . consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility as a witness”).

because the central disputed issue at trial was whether U.P. credibly testified that she did not consent to sexual intercourse with Burks. U.P.’s prior statements did not duplicate other trial evidence and instead provided important context that could not be fully reproduced through questioning of U.P. at trial. *See Valentine*, 787 N.W.2d at 640.

Thus, the district court’s admission of U.P.’s prior statements was not plain error because it did not “violate[] or contradict[] case law, a rule, or an applicable standard of conduct.” *Matthews*, 779 N.W.2d at 549. Because we conclude that the district court did not plainly err in admitting U.P.’s prior statements, we need not consider the substantial-rights prong of the plain-error analysis.⁴ *See Smith*, 932 N.W.2d at 271.

II. The district court did not plainly err by admitting B.B.’s prior statements, and any assumed evidentiary error did not affect Burks’s substantial rights.

Burks asserts that the district court plainly erred by admitting B.B.’s prior statements to law enforcement through police body camera footage because the statements were inadmissible hearsay. Burks contends that B.B.’s prior statements do not qualify as non-hearsay prior consistent statements because he did not challenge B.B.’s credibility.

⁴ We also note that “[t]he distinction between a jury trial and a bench trial is important” and that, even if any of U.P.’s prior statements were needlessly cumulative, the risk that admission of those challenged statements affected Burks’s substantial rights by prejudicially affecting the outcome of this case is reduced because the parties tried the matter to the court and not a jury. *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (explaining that “[t]he risk of unfair prejudice to [a defendant] is reduced because there is comparatively less risk that the district court judge, as compared to a jury of laypersons, would use [certain] evidence for an improper purpose or have [their] sense of reason overcome by emotion” and that, “taking into account the district court judge’s experience and familiarity with the operation of the rules of evidence, the risk of unfair prejudice is lessened”); *see also Matthews*, 779 N.W.2d at 549.

Burks maintains that the district court's erroneous admission of B.B.'s prior statements affected his substantial rights because the court's written findings reflect that the statements affected the verdict and "the statements pervaded the trial." We are not persuaded.⁵

Hearsay is an out-of-court statement, made by a declarant, that is offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay statements are generally inadmissible at trial. Minn. R. Evid. 802. Under Minnesota Rule of Evidence 801(d)(1)(B), however, a statement is not hearsay if: (1) the declarant testifies at the trial or hearing; (2) the declarant is subject to cross-examination concerning the statement; (3) the statement is consistent with the declarant's testimony; and (4) the statement is helpful to the trier of fact in evaluating the declarant's credibility as a witness. Before admitting a prior consistent statement, the district court must determine (1) that the credibility of the declarant was challenged and (2) that the statement bolsters the declarant's credibility with respect to the aspects of the declarant's credibility being challenged. *State v. Nunn*, 561 N.W.2d 902, 909 (Minn. 1997).

Here, despite his appellate claim to the contrary, Burks *did* challenge B.B.'s credibility at trial. In his opening statement, defense counsel said that Burks would "testify in detail about how this was a consensual act" and that counsel would "reserve what [Burks

⁵ As explained herein, we conclude that the district court did not plainly err in admitting B.B.'s statements to law enforcement through police body camera footage because they were prior consistent statements per Minnesota Rule of Evidence 801(d)(1)(B) and because any assumed evidentiary error did not affect Burks's substantial rights. We do not address Burks's additional argument that B.B.'s prior statements do not meet the requirements for admission under the residual hearsay exception set forth in Minnesota Rule of Evidence 807.

was] going to say until he testifies.” B.B. later testified: (1) that Burks called B.B. seeking somewhere to shower and sleep; (2) that B.B. agreed to allow Burks to do so at her apartment; (3) that Burks again asked B.B. if he could shower after he arrived at her apartment; and (4) that B.B. heard the shower running before she went to sleep. In his testimony, however, Burks denied wanting to shower, claimed that he said nothing to B.B. about showering when he arrived at her apartment, stated that he did not request to shower, said that he did not turn the water on, and asserted that he did not use B.B.’s shower. Given these repeated disavowals by Burks, we conclude that Burks challenged B.B.’s credibility and that her prior consistent statements to law enforcement bolstered that credibility. *See Nunn*, 561 N.W.2d at 909. Because B.B.’s prior statements qualified for admission under Minnesota Rule of Evidence 801(d)(1)(B), the district court’s admission of the statements did not “violate[] or contradict[] case law, a rule, or an applicable standard of conduct” and was thus not plain error. *Matthews*, 779 N.W.2d at 549.

Even assuming without deciding that the district court’s admission of B.B.’s prior statements amounted to plain error, Burks’s substantial rights were unaffected. We acknowledge that Burks had not yet explicitly challenged B.B.’s credibility through his testimony in the defense’s case when the district court admitted B.B.’s prior statements in the state’s case-in-chief. That said, had the district court declined to receive B.B.’s prior statements during the state’s case-in-chief, it nonetheless could have done so in the state’s rebuttal case, after Burks testified and challenged B.B.’s credibility.

Moreover, as noted above and explained in the memorandum accompanying the district court’s written “Verdict of Guilty,” the core dispute at trial was “whether the sexual

encounter was consensual.” It is true that the district court found that “the aspect [of the trial testimony that] . . . present[ed] the most compelling indicator of credibility [was] whether Mr. Burks intended to take a shower or not.” And the district court did find that, in the body camera footage, B.B. “not only tells the story about Mr. Burks leaving the room to shower, but she actually shows the officer the towels she gave him for that very purpose.”

But the district court did not rely solely upon a determination that Burks had lied about the shower in crediting U.P.’s testimony that she did not consent to sexual intercourse over Burks’s testimony that she did. Indeed, the district court expressly determined that, “[e]ven without Mr. Burks’ credibility damaged by dishonesty about the shower, the story he told seriously challenges common sense.” In particular, the district court found it “unlikely” that, after a night of drinking and heavy sleep, U.P. “spontaneously invited a man, mostly unknown to her, to have an intimate sexual encounter and then supposedly abruptly stopped upon discovering he was not wearing a condom.” The district court also determined that Burks’s version of the incident was “particularly improbable” based on his claim that U.P. guided his penis into her vagina, stating that, “if a condom were a necessary element to any welcomed intercourse, [U.P.] would have stopped the encounter before there was any penile penetration since she knew [Burks] didn’t have a condom on at the time.” Moreover, the district court found that U.P.’s credibility was enhanced by “the consistent manner in which she ha[d] told her story.”

We cannot say that the district court’s admission of B.B.’s prior statements was prejudicial and affected the outcome of the case because that evidence did not “significantly influence[] the verdict by going to a critical issue at the trial” and the

evidence was not “central to the prosecution’s case.” *Vasquez*, 912 N.W.2d at 650; *see also Matthews*, 779 N.W.2d at 549. Instead, as explained above, the district court’s credibility determination in favor of U.P.’s and B.B.’s accounts of the incident relied on several grounds independent of any issue about the shower. Appellate courts “defer to the district court’s credibility determination and disregard any testimony conflicting with the verdict[.]” *State v. King*, 990 N.W.2d 406, 420 (Minn. 2023); *see also State v. Dahlin*, 695 N.W.2d 588, 596 (Minn. 2005) (“We emphasize that both credibility determinations and the weighing of evidence are tasks reserved to the [fact-finder].”). Thus, we conclude that the district court’s admission of B.B.’s prior statements did not affect Burks’s substantial rights.

In sum, because the district court did not plainly err by admitting the prior statements Burks challenges in this appeal, and because any assumed error as to the admission of B.B.’s prior statements did not affect Burks’s substantial rights, we conclude that Burks is not entitled to a new trial.

Affirmed.