

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1010**

State of Minnesota,
Respondent,

vs.

Joseph Ernest Marshall,
Appellant.

**Filed July 7, 2025
Affirmed
Wheelock, Judge**

Olmsted County District Court
File No. 55-CR-21-6821

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

Michael T. Walters, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Peter H. Dahlquist, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his fifth-degree assault conviction, arguing that the testimony of two law-enforcement officers deprived him of his right to a fair trial. We affirm.

FACTS

Law-enforcement officers responded to an assault in downtown Rochester early in the morning on November 26, 2021. Officers M.K. and B.C. found the victim outside of a bar, on the ground, bleeding, and with a substantial laceration on his forehead. The victim was transported to the hospital. According to law enforcement, he had several face lacerations and severe swelling of the face, and he was throwing up blood.

A bystander informed officers that someone hit the victim in the head with a bottle. Officers located shards of glass and “what appeared to be a Patron bottle near a pool of blood.” Staff at a bar nearby informed officers that the victim had been in an argument with a Black male who had long dreadlocks and was wearing a black coat. Dispatch informed the responding officers that city-owned security cameras in downtown Rochester might have captured the incident, and Officer B.C. left the scene to review the video footage.

Officer B.C. reviewed the footage from security cameras that had views of Third Street Southwest and the alley near where the incident occurred. The security-camera footage showed the victim walking down the street before a person approached him. The person then pulled what appeared to be a bottle from his jacket and struck the victim once in the face with it. The victim collapsed. Upon viewing the security-camera footage, Officer B.C. requested that it be saved for evidence.

In the meantime, Officer R.A. had also responded to the scene. Dispatch gave Officer R.A. the following description of the suspect: “[a] black jacket with fur and Black male with dreads.” As Officer R.A. was searching the immediate area surrounding the

crime scene for persons matching the description dispatch had provided, he came upon appellant Joseph Ernest Marshall, who matched the description of the assailant, and detained him.

Officer B.C. then informed Officer R.A. that the individual whom Officer R.A. detained was the same individual he had seen in the security-camera footage. Officer R.A. noted that Marshall had distinctive shoulder-length dreadlocks that assisted him in verifying that the person he detained matched the description of the person who assaulted the victim. Marshall was also wearing a coat, hat, and boots that matched those of the person in the city's security-camera footage.

Respondent State of Minnesota charged Marshall with one count of third-degree assault for inflicting substantial bodily harm in violation of Minn. Stat. § 609.223, subd. 1 (2020), and one count of fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 4(b) (2020).

The district court held a jury trial in January 2024. The state's evidence included testimony from Officer B.C. and Officer R.A. The prosecutor played the city's security-camera footage for the jury during Officer B.C.'s direct examination and asked him what he saw when he viewed the city's security-camera footage of the incident for the first time:

PROSECUTOR: What did you observe in the footage?

OFFICER B.C.: I observed a male, the Defendant, swinging some sort of object in overhead motion that was consistent with the broken glass that we found on scene and photographed.

MARSHALL'S ATTORNEY: Objection, improper identification.

THE COURT: Sustained.

At another point during Officer B.C.'s direct examination, the prosecutor asked him what "Exhibits 3 through 9" were, for the purpose of introducing them into the record:

PROSECUTOR: I'm showing you what has been marked as Exhibits 3 through 9. I will have you page through that. So what are Exhibits 3 through 9?

OFFICER B.C.: Those are still shots of the Defendant producing—

MARSHALL'S ATTORNEY: Objection, improper identification.

THE COURT: Sustained.

PROSECUTOR: Without making any identifications, what are Exhibits 3 through 9?

OFFICER B.C.: Those are photos of an individual producing an item from their pocket and striking it over the head of the victim.

Later, the prosecutor showed Officer B.C. exhibit 17—another still shot—and asked him what it was:

PROSECUTOR: What is Exhibit 17?

OFFICER B.C.: This is an individual that matched the description of the Defendant walking with a—

MARSHALL'S ATTORNEY: Objection, improper identification.

THE COURT: I'm going to let Officer [B.C.] finish his description first. How are you identifying that, Officer [B.C.]?

OFFICER B.C.: Based off of the clothing and physical description of the individual.

THE COURT: The objection is overruled at this time.

Officer B.C. then testified to the following observations about the person whom Officer R.A. had apprehended near the crime scene:

PROSECUTOR: [O]nce you made these observations from dispatch using the city street surveillance, what did you do next?

OFFICER B.C.: I informed Officer [R.A.] that the individual that I witnessed in this footage was indeed the individual that he had detained at that time.

DEFENSE: Objection, lack of foundation.
THE COURT: Overruled.

Marshall's trial attorney cross-examined Officer B.C. and primarily asked questions about the city's surveillance recording system and digital file storage.

Officer R.A. testified next. During Officer R.A.'s direct examination, the prosecutor asked the following questions:

PROSECUTOR: In your comparison from your interaction with Mr. Marshall and the street surveillance, were you confident in making an identification?

OFFICER R.A.: Yes.

PROSECUTOR: And what was the identification you were able to make?

MARSHALL'S ATTORNEY: Objection, [im]proper identification.

THE COURT: Overruled. You may answer the question.

OFFICER R.A.: Thank you. The identification that I was able to make is that the suspect that we were attempting to locate that was described was the person that I had located and detained.

Marshall's trial attorney cross-examined Officer R.A., asking him questions about when he arrived at the crime scene, why he arrested Marshall, and the manner in which he inspected Marshall upon arrest. Marshall waived his right to testify and presented no evidence. Near the end of trial, the district court gave a standard instruction to the jury regarding evidentiary rulings it made throughout the trial:

During this trial, I have ruled upon objections to certain testimony and exhibits. You must not concern yourself with the reasons for the rulings since they are controlled by our Rules of Evidence. By admitting evidence or testimony and exhibits as to which objections were made, I did not intend to indicate the weight to be given such testimony or exhibits. You are not to speculate as to the possible answers to those questions that I did not require to be answered, and you are to

disregard all evidence I have ordered stricken or have told you to disregard.

Marshall never requested a curative instruction during trial. The jury returned a guilty verdict on the fifth-degree assault charge but acquitted Marshall of the third-degree assault charge.

Marshall appeals.

DECISION

Marshall argues that he is entitled to a new trial because the district court erred by admitting the officers' testimony to which he objected and by not sua sponte issuing a curative instruction with regard to Marshall's objections to portions of the officers' testimony identifying Marshall. In making this argument, Marshall contends that the officers should not have been permitted to testify under Minn. R. Evid. 701 because the officers were merely "interpreting" a video that the jury themselves viewed. The state argues that admitting the testimony was not an abuse of discretion.

We first analyze the three objections Marshall made that the district court overruled and consider whether the district court abused its discretion in admitting these three portions of testimony. Then, we consider the two objections that the district court sustained.

A. The district court did not abuse its discretion when it overruled three of Marshall's objections to the officers' testimony because their testimony embraced factual, rather than legal, conclusions.

"Evidentiary rulings rest within the sound discretion of the district court, and [an appellate court] will not reverse an evidentiary ruling absent a clear abuse of discretion."

State v. Ali, 855 N.W.2d 235, 249 (Minn. 2014). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020) (quoting *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017)). “The defendant has the burden on appeal of proving both that the trial court abused its discretion by admitting the evidence and that the defendant was thereby prejudiced.” *State v. Chomnarith*, 654 N.W.2d 660, 665 (Minn. 2003). An appellate court “will reverse the district court’s ruling if the error substantially influenced the jury’s decision.” *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009).

Lay opinions that are rationally based on a witness’s perceptions are admissible if they are helpful to a jury. *State v. Washington*, 725 N.W.2d 125, 137 (Minn. App. 2006), *rev. denied* (Minn. Mar. 20, 2007). The Minnesota Rules of Evidence provide that lay-opinion testimony is admissible when it

is limited to those opinions or inferences which are
(a) rationally based on the perception of the witness;
(b) helpful to a clear understanding of the witness’ testimony
or the determination of a fact in issue; and (c) not based on
scientific, technical, or other specialized knowledge within the
scope of Rule 702.

Minn. R. Evid. 701. “Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Minn. R. Evid. 704. “[U]ltimate conclusion testimony which embraces legal conclusions or terms of art’ is not considered helpful to the jury.” *State v. Patzold*, 917 N.W.2d 798, 808 (Minn. App. 2018) (quoting *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990)), *rev. denied* (Minn. Nov. 27, 2018). District courts “may also exclude

testimony on the ultimate issue when the testimony would merely tell the jury what result to reach.” *Id.* (quotation omitted). However, “the supreme court has allowed police officers to express opinions concerning who killed a victim when the conclusion was factual rather than legal and was offered in response to leading questions, and the officer avoided legal terminology.” *Id.* (quotation omitted).

Here, the district court properly overruled three of Marshall’s objections to the identification testimony because the testimony expressed factual, rather than legal, conclusions and thus was admissible under rule 701. *See id.* In Marshall’s first overruled objection, the prosecutor had shown the testifying officer exhibit 17—a still shot from the security-camera footage of Marshall and a woman walking—and asked him what it was. He testified as follows:

OFFICER B.C.: This is an individual that matched the description of the Defendant walking with a—

MARSHALL’S ATTORNEY: Objection, improper identification.

THE COURT: I’m going to let Officer [B.C.] finish his description first. How are you identifying that, Officer [B.C.]?

OFFICER B.C.: Based off of the clothing and physical description of the individual.

THE COURT: The objection is overruled at this time.

Because the officer was testifying about the individual he saw in the image and the comparison he had made of that person with the description of the suspect he had been given, his testimony embraced a factual, rather than a legal, conclusion. Thus, his testimony was admissible under *Patzold*, 917 N.W.2d at 808, and *DeWald*, 463 N.W.2d at 744.

Marshall's second overruled objection was when the prosecutor asked the testifying officer about what he did after observing the security-camera footage:

PROSECUTOR: [O]nce you made these observations from dispatch using the city street surveillance, what did you do next?

OFFICER B.C.: I informed Officer R.A. that the individual that I witnessed in this footage was indeed the individual that he had detained at that time.

MARSHALL'S ATTORNEY: Objection, lack of foundation.

THE COURT: Overruled.

Here, the officer's testimony explained that the individual Officer R.A. had detained appeared to be the same person whom the testifying officer had observed in the security-camera footage. Because this testimony again embraced a factual, rather than legal, conclusion, it was admissible under *Patzold*, 917 N.W.2d at 808, and *DeWald*, 463 N.W.2d at 744.

Marshall's third overruled objection was during the direct examination of Officer R.A., when the prosecutor asked if the person who was detained matched the description of the suspect they were attempting to locate:

PROSECUTOR: In your comparison from your interaction with Mr. Marshall and the street surveillance, were you confident in making an identification?

OFFICER R.A.: Yes.

PROSECUTOR: And what was the identification you were able to make?

DEFENDANT'S ATTORNEY: Objection, [im]proper identification.

THE COURT: Overruled. You may answer the question.

OFFICER R.A.: Thank you. The identification that I was able to make is that the suspect that we were attempting to locate that was described was the person that I had located and detained.

Here, the officer testified to a factual conclusion—that the person the officers had detained matched the description of the suspect they were attempting to locate. We again conclude that the officer’s testimony was factual and therefore admissible under *Patzold*, 917 N.W.2d at 808, and *DeWald*, 463 N.W.2d at 744.

We next consider Marshall’s argument that the officers’ testimony was not admissible pursuant to rule 701 because the officers were merely “interpreting” a video the jury viewed. A review of the transcript shows that each officer’s testimony was based on their own perceptions because they were testifying about what they saw at the crime scene or what they saw on the city’s security-camera footage during the investigation. This is distinct from interpreting a video that the jury viewed. Officer B.C.’s and Officer R.A.’s testimony assisted the jury in determining a fact at issue—the identity of the assailant—because the ultimate issue of the jury trial was whether Marshall was the person who assaulted the victim. Finally, Officers B.C. and R.A. were not testifying as experts pursuant to Minn. R. Evid. 702 because they were merely testifying about what they perceived at the scene of the crime and on the city’s security-camera footage.

Marshall urges us to reverse the district court, arguing that the facts of his appeal are analogous to those in three nonprecedential cases: *State v. Grunig*, No. A10-81, 2010 WL 4451281 (Minn. App. Nov. 9, 2010); *State v. Turner*, No. A23-1709, 2024 WL 4812939 (Minn. App. Nov. 18, 2024), *rev. denied* (Feb. 18, 2025); and *State v. Ramsey*, No. A23-1554, 2024 WL 4587915 (Minn. App. Oct. 28, 2024).¹

¹ Marshall cites nonprecedential caselaw solely for its persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions and order opinions are not binding

We do not find Marshall’s comparisons to these three cases persuasive. We observe as an initial matter that they are not binding authority. *Patzold* and *DeWald*, however, are binding authorities, and their analyses compel us to conclude that the district court did not abuse its discretion in making the challenged evidentiary rulings. Moreover, we disagree with Marshall that any of these cases—*Grunig*, *Turner*, or *Ramsey*—supports his argument.

In *Grunig*, a law-enforcement officer testified that the defendant was seen in three crime-scene videos by comparing a videotape to the defendant’s driver’s license photo. 2010 WL 4451281, at *1. The jury never saw the driver’s license photo and so, unlike here, never had the opportunity to perform its own independent comparison. *Id.*

In *Turner*, a law-enforcement officer testified and, while narrating a video of a fatal shooting to the jury, stated that an individual in the video was “the fatal shooter.” 2024 WL 4812939, at *1. Then, the officer stated that he believed the defendant was the shooter in the video. *Id.* But officer testimony that interprets video evidence for a jury and amounts to an opinion about the ultimate issue of who was guilty of the crime is different from the testimony at issue in this case, in which law-enforcement officers offered testimony about what they observed in the security-camera footage and how they compared the appearance of the apprehended individual to the individual they saw in the footage.

Finally, in *Ramsey*, this court concluded that a district court did not abuse its discretion when it allowed a sergeant to explain how she used video surveillance to track

authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”).

the individual shown to have shot the victim in video footage, and to connect that individual in the footage to the defendant. 2024 WL 4587915, at *3-4. We reasoned that the sergeant’s testimony was admissible because it was helpful to the jury and did not identify the defendant “as the shooter.” *Id.* at *4. The law-enforcement officers in this case similarly provided helpful information to the jury by explaining the factual basis for the decisions that they made on the night of Marshall’s arrest, and they did not simply state to the jury that Marshall assaulted the victim.

We conclude that each portion of challenged testimony was admissible under *Patzold*, 917 N.W.2d at 808, and *DeWald*, 463 N.W.2d at 744, and met the requirements for lay-opinion testimony pursuant to rule 701. We therefore conclude that the district court did not abuse its discretion when it overruled these three objections.

B. The district court did not plainly err when it did not sua sponte issue curative instructions for the testimony to which Marshall successfully objected during trial.

Generally, parties forfeit appellate review of jury instructions when they fail to request specific instructions. *State v. Goodloe*, 718 N.W.2d 413, 422 (Minn. 2006) (“Failure to request specific jury instructions or to object to instructions given generally results in forfeiture of the issue on appeal.”). However, appellate courts may consider forfeited issues if appellants can establish plain error. *State v. Zinski*, 927 N.W.2d 272, 275 (Minn. 2019).

When conducting plain-error review, appellate courts must determine whether there was (1) an error, (2) that was plain, and (3) that affected the defendant’s substantial rights. *State v. Kuhlmann*, 806 N.W.2d 844, 852 (Minn. 2011). An error is plain when it is clear

or obvious. *Id.* at 853. If the plain error affected the outcome of the case, then it affected the defendant’s substantial rights. *See id.* at 852-53. If all three prongs of plain-error review are met, appellate courts then must consider “whether reversal is required to ensure the fairness, integrity, or public reputation of the judicial proceedings.” *State v. Coleman*, 957 N.W.2d 72, 77 (Minn. 2021) (quotation omitted). If an appellate court concludes that any of the above requirements are not satisfied, it need not continue its analysis. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

In *State v. Washington*, the supreme court addressed whether plain error occurs when district courts do “not act *sua sponte* to limit . . . testimony’s impact by providing a curative instruction.” 693 N.W.2d 195, 205 (Minn. 2005). The supreme court stated that district courts should not “interfere with the trial strategy of the defendant” and that to respond *sua sponte* to testimony “would risk highlighting or enforcing rights that the defendant had, for tactical reasons, declined to waive.” *Id.* Because caselaw informs us that district courts should generally not issue curative instructions upon their own volition, we conclude that the district court did not plainly err when it did not *sua sponte* issue a curative instruction to accompany the two sustained objections to the officers’ testimony.

Affirmed.