

*This opinion is nonprecedential except as provided by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
A24-1340**

State of Minnesota,
Respondent,

vs.

Jacob James Smith,
Appellant.

**Filed July 21, 2025
Affirmed
Worke, Judge**

McLeod County District Court
File No. 43-CR-23-1235

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Ryan Hansch, McLeod County Attorney, Glencoe, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Paul J. Maravigli, Special Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Smith, John, Judge.*

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his convictions of first-degree criminal sexual conduct and engaging in electronic communication with a child relating to or describing sexual conduct, arguing that the district court plainly erred by admitting into evidence (1) the victim's forensic interview as a prior consistent statement and (2) unnoticed and unqualified expert testimony. Appellant also challenges the nature of the state's charging document in his pro se supplemental brief. We affirm.

FACTS

In August 2023, 13-year-old M.B. and her friend, E.N., were at the Crow River near Hutchinson. While there, they had a conversation with appellant Jacob James Smith. During the conversation, Smith, who was 34 years old, provided E.N. his Snapchat¹ contact information. Several days later, M.B. obtained Smith's Snapchat information and began exchanging messages with Smith.

In the evening of August 24, 2023, M.B. and E.N. arranged to go swimming with Smith. Smith picked them up in his car and drove them to a lake. During the swim, Smith "grabbed" M.B. and started showing her "sex positions." At some point, Smith removed his swim trunks and swam naked.

After the swim, the group returned to Smith's car. Smith sat in the driver's seat, M.B. sat in the front seat, and E.N. sat in the back seat. Smith began driving back to town.

¹ Snapchat is an electronic application that allows users to send and receive messages on an electronic device such as a phone or computer.

After several minutes, M.B. felt Smith touch her thigh. Smith then “slid his hand into [her] pants,” and “put his fingers inside of [her vagina].” The touching continued for approximately “twenty, thirty minutes,” and stopped when Smith dropped the girls off near M.B.’s house.

Between August 25 and August 28, 2023, Smith exchanged messages with M.B. on Snapchat. The messages included Smith’s description of sex acts he wished to perform on M.B., a description of his genitalia, and his request that she not inform her mother about what happened. On August 28, M.B.’s family member found the messages and provided them to police. The next day, a police officer conducted a forensic interview with M.B. During the interview, M.B. described Smith assaulting her.

Respondent State of Minnesota charged Smith with two counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1a(e) (2022), and engaging in electronic communication with a child relating to or describing sexual conduct, in violation of Minn. Stat. § 609.352, subd. 2a(2) (2022).²

M.B. testified at trial and the state moved to admit the video of her forensic interview as a prior consistent statement. The district court granted the motion after determining that the interview was consistent with M.B.’s testimony, that Smith had raised “some challenge to [M.B.]’s credibility,” and that the interview “would be helpful to the trier of fact.” Smith requested a minor redaction of the video but did not object to its

² During the trial, the state moved to amend count two from first-degree to second-degree criminal sexual conduct. Smith did not object and the district court granted the motion.

admission. The state played the video contemporaneous with the interviewer's testimony. Smith did not object to the testimony.

The jury found Smith guilty on all counts. The district court sentenced him to 186 months in prison for the first-degree criminal-sexual-conduct conviction, and a concurrent 60-month sentence for the electronic-communication conviction.

This appeal followed.

DECISION

Smith argues that his convictions must be reversed and remanded for a new trial because the district court plainly erred by (1) admitting into evidence the victim's forensic interview as a prior consistent statement, and (2) permitting improper expert testimony.

When a defendant does not object at trial, this court has discretion to review the unobjected-to error under the plain-error rule. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 742 (Minn. 1998). "To establish plain error warranting reversal of a conviction based on an unobjected-to error, an appellant must show (1) an error (2) that is plain (3) that affects a defendant's substantial rights." *State v. Beganovic*, 991 N.W.2d 638, 655 (Minn. 2023). "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotations omitted). Even if all three prongs are met, this court may correct the error only if it also determines that "failure to correct the error would cause the public to seriously question the fairness and integrity of our judicial system." *Beganovic*, 991 N.W.2d at 655. If a defendant fails to meet any prong

of the plain-error test, we need not consider the others. *State v. Smith*, 932 N.W.2d 257, 271 (Minn. 2019).

Prior consistent statement

Smith argues that the district court plainly erred by admitting M.B.’s forensic interview as a prior consistent statement because the statement was inadmissible hearsay. He contends that M.B.’s statement is inadmissible because he did not challenge her credibility.

Hearsay is an out-of-court statement offered “to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is generally not admissible at trial. Minn. R. Evid. 802. But a prior out-of-court statement is not hearsay if “[t]he declarant testifies . . . and is subject to cross-examination concerning 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.” Minn. R. Evid. 801(d)(1)(B). Before admitting a prior consistent statement, the district court must determine that (1) the credibility of the declarant was challenged and (2) 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).

Smith’s claim that he did not challenge M.B.’s credibility is unpersuasive. In his opening statements, defense counsel raised the issue of M.B.’s credibility. He told jurors that when witnesses testified, it was their job to “take in the credibility. How did the witnesses say certain things. What do they remember. What do they not remember. How do they contradict, if they contradict.” He suggested that M.B.’s testimony would describe

events occurring within a “short period” of time and asked jurors to consider whether that timeline “ma[de] sense” and determine “who [they] believe.”

Defense counsel then implied that M.B. either lied or misremembered aspects of the night she was assaulted, telling jurors they would “hear during this story that [M.B.] sat in the front seat of [Smith’s] truck, that she used a towel from his truck to dry off, and then you’ll hear the BCA agent come in and say no DNA evidence was found on this towel or in that truck.”

Finally, defense counsel challenged M.B.’s motives when cross-examining her:

Q: Have you told your mom all of this?

A: Yes.

Q: All of the details?

A: Yes.

Q: About just the messages, or the lake?

A: Like, I told her everything.

Q: You also said you kind of wanted him to get in trouble?

A: Yes.

Q: At what point did you go from liking the attention and having friendly feelings to wanting him to get in trouble?

A: Because I found out that it was wrong.

Based on this record, we conclude that Smith challenged M.B.’s credibility and that her prior consistent statement was admissible under rule 801(d)(1)(B) to bolster that credibility. *See State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000) (prior consistent statement may bolster witness’s credibility by “obviating an improper influence or motive, providing a meaningful context, or demonstrating accuracy of memory”), *rev. denied* (Minn. Feb. 24, 2000). The district court’s admission of the statement therefore did not “contravene[] case law, a rule, or an applicable standard of conduct,” and Smith fails to meet his burden to show plain error. *See Webster*, 894 N.W.2d at 787.

Expert testimony

Smith next argues that the district court plainly erred by allowing the forensic interviewer to testify as an unnoticed and unqualified expert witness. Because Smith did not object at trial, we again review his claim under the plain-error standard. *Griller*, 583 N.W.2d at 740.

“[A] witness qualified as an expert” may provide opinion testimony “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Minn. R. Evid. 702. Lay witnesses may also provide opinion testimony, but only to opinions “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.” Minn. R. Evid. 701.

Smith argues first that the interviewer portrayed herself “as an expert in forensic interview techniques” by describing her forensic interview training, and the circumstances in which law enforcement determines that a forensic interview is necessary.

The interviewer testified that she received “a four-day training in basic Corner House forensic interviewing.” She testified that the training included “mock interviews” and that she had conducted “[a]pproximately ten to fifteen” interviews in her role as a child-protection worker. When asked how a forensic interview is “scheduled” or “prompt[ed],” the interviewer replied: “If there is a report of sexual abuse, we or law enforcement will offer to the parents if they want to schedule a forensic interview.”

Smith fails to explain his argument or cite any authority supporting his claim that the interviewer's description of her "basic" training, or her description of the police department's investigatory practices, amount to the interviewer claiming expertise in forensic-interview techniques.

Smith next argues that the interviewer "claim[ed] expertise in evaluating a child's demeanor," and "opine[d] on how to evaluate the demeanor of a victim of sex abuse based on how that child 'processes' the experience." Smith's argument is based on this exchange between the prosecutor and the interviewer:

Q: Do you recall what [M.B.]'s demeanor was during the interview?

A: It was neutral; I would say a flat affect.

....

Q: Okay. And is there a quote, unquote, kind of standard demeanor that children have during these interviews?

A: No.

Q: And what do you mean by that?

A: I have had children that are very flat, they're very neutral; I've had children that are crying; I've had children that laugh. It just depends on how that child processes and how they -- their behavior when they're talking about something that had happened.

The interviewer did not directly or indirectly claim expertise during this exchange, nor did she describe, as Smith contends, an ability to "evaluate" or "draw certain conclusions" based on a child's demeanor.

Our decision in *State v. Wembley*, 712 N.W.2d 783 (Minn. App. 2006), *aff'd*, 782 N.W.2d 243 (Minn. 2007), is instructive here. In *Wembley*, we concluded that a forensic interviewer provided inadmissible expert testimony because she testified about the criteria

she used in assessing an interviewee's credibility *and* that the interviewee was consistent with those criteria. *Id.* at 792. But we also concluded that the erroneously admitted testimony did not prejudice the defendant because "the jury could judge for itself all of the factors on which [the witness] relied in making her assessment." *Id.* Here, the interviewer neither described a criterion for assessing M.B.'s credibility during the interview nor opined as to whether M.B. was credible during the interview. And, even if the interviewer's testimony as to M.B.'s demeanor could be construed as assessing her credibility, under *Wembley* the testimony was not prejudicial because the jury observed her demeanor in the video and could judge that factor for itself. *See id.*; *see also State v. Morales-Mulato*, 744 N.W.2d 679, 690 (Minn. App. 2008) (concluding that forensic interviewer's testimony that victim met assessment criteria and had been sexually abused was harmless error because the jury could assess victim's credibility without the testimony), *rev. denied* (Minn. Apr. 29, 2008). For these reasons, Smith cannot show that the district court plainly erred by admitting the testimony.

Moreover, even if admitting the interviewer's testimony was plain error, we conclude that it did not affect Smith's substantial rights. "Plain error affects a defendant's substantial rights if there is a reasonable likelihood that the error had a significant effect on the jury's verdict." *State v. Bustos*, 861 N.W.2d 655, 663 (Minn. 2015) (quotation omitted). In evaluating the effect of erroneously admitted evidence, we consider "(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence." *State v. Smith*, 940 N.W.2d

497, 505 (Minn. 2020). We also consider whether “[s]trong evidence of guilt undermines the persuasive value of wrongly admitted evidence.” *Id.* Smith “bears a heavy burden of persuasion on this prong” of the plain-error test. *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (quotation omitted).

Smith argues first that the interviewer’s claimed expertise afforded her “undue influence” with the jury as to M.B.’s credibility. He cites *State v. DeShay* for the basic proposition that “experts with specialized knowledge” have the potential to “unduly influence the jury.” 669 N.W.2d 878, 885 (Minn. 2003). But Smith fails to describe *how* the interviewer’s testimony bolstered M.B.’s credibility, and he does not cite any portion of her testimony in which the interviewer assessed M.B.’s credibility.

Smith next contends that the state used the interviewer’s testimony in closing argument. In closing, the prosecutor suggested that the interviewer’s interest in the outcome of the case was limited because she was “just doing [her] job.” Later, the prosecutor referenced the interviewer when reminding the jury that, during the interview, M.B. referred to Smith as “respectful.” Smith neglects to explain how these two brief references contributed to a reasonable likelihood that the interviewer’s testimony affected the jury’s verdict.

Because Smith cannot show that the district court’s admission of the forensic interview and the interviewer’s testimony constituted plain error affecting his substantial rights, we affirm.

Smith's pro se argument does not warrant relief

In his pro se brief, Smith appears to argue that, because he was charged with a crime for which he could be sentenced to a lifetime period of conditional release, the state was required, under Minn. R. Crim. P. 17.01, to charge him by indictment rather than complaint. Smith's argument fails because "[t]he imposition of a lifetime period of conditional release does not constitute a punishment of life imprisonment for purposes of [Minn. R. Crim. P. 17.01, subd. 1], and the underlying offense need not be prosecuted by indictment." *State v. Snyder*, 984 N.W.2d 590, 591 (Minn. App. 2023), *aff'd*, 2 N.W.3d 302 (Minn. 2024).

Affirmed.