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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1395**

State of Minnesota,
Respondent,

vs.

Jerdale Lewis Grace,
Appellant.

**Filed September 2, 2025
Affirmed
Halbrooks, Judge***

Polk County District Court
File No. 60-CR-22-488

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

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

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

On appeal from his conviction of third-degree possession of a controlled substance in a prohibited zone, appellant argues that (1) the prosecutor engaged in prejudicial misconduct that entitles him to a new trial, (2) the district court abused its discretion by admitting *Spreigl* evidence of his prior drug-related offenses, and (3) the district court abused its discretion by denying his motion for a downward durational departure. Because any plain error did not affect appellant's substantial rights and we otherwise discern no abuse of discretion, we affirm.

FACTS

In March 2022, an East Grand Forks corporal observed a Cadillac with an object hanging from the rearview mirror, a nontransparent sticker or decal on the back window, and objects on the dashboard that potentially blocked the driver's view. The corporal followed the Cadillac and, after observing it pass within 300 feet of an elementary school and, later, within 300 feet of a park, he initiated a traffic stop. Seated in the back seat was appellant Jerdale Lewis Grace; a backpack was on the floor near Grace's leg.

While speaking with the Cadillac's occupants, the corporal detected an odor of burnt marijuana emanating from the vehicle. The vehicle was then searched after additional law-enforcement officers arrived at the scene. During a search of the backpack that was near Grace's leg, law-enforcement officers discovered an identification card for Grace in a wallet and a crumpled piece of paper with a handwritten notation stating: "FEB 7th court St. Cloud check—9 30 am." Officers also discovered a pen tube/straw with white residue

on it, and a case containing two baggies. One of the baggies contained marijuana and the other contained a “white crystalline residue.” Both the straw and baggie containing the white residue field-tested positive for cocaine.

Grace acknowledged that the backpack and marijuana were his but denied knowing anything about the second baggie containing the cocaine residue. And when the corporal asked Grace if he was on probation or had been in trouble for drugs, Grace admitted that he had been in trouble for cocaine in the past and that he was on probation.

Grace was arrested and transported to the police station. During an interview with the corporal, Grace stated that he was using the backpack and that he had “stuffed” some items into the backpack, but that he did not know that there were any drugs in the backpack. He also claimed that he admitted to possessing the marijuana found in the backpack just to “speed up the process.” Grace acknowledged that he was on probation for possession of drugs in Grand Forks, North Dakota, and Stearns County. He further agreed to provide a urine sample, the results of which revealed the presence of cocaine.

Respondent State of Minnesota charged Grace with third-degree possession of a controlled substance—possession of any amount of cocaine in a prohibited zone. Prior to trial, Grace failed to appear for a December 2022 pretrial conference and later provided a false name to a police officer when he was arrested on an outstanding warrant.

The state filed pretrial motions seeking to admit (1) *Spreigl*¹ evidence of two previous controlled-substance offenses committed by Grace, (2) evidence of Grace’s

¹ “*Spreigl* evidence is evidence of a defendant’s prior crimes, wrongs, or acts, which would otherwise be inadmissible, but which the state can seek to have admitted for the limited

failure to appear in court in December 2022, (3) evidence that a warrant had been issued for his arrest, and (4) evidence that Grace provided a false name to law enforcement. The district court determined that evidence of Grace's failure to appear in court and his provision of a false name to a police officer were admissible to prove consciousness of guilt. The district court also ruled that the proffered *Spreigl* evidence was admissible to prove Grace's intent and knowledge.

At trial, the state presented evidence related to the stop of the Cadillac, as well as the search of the vehicle and backpack. The state also introduced, inter alia, the following: (1) the corporal's body-worn-camera footage of the traffic stop and an audio recording of his interview of Grace at the police station in which Grace admitted to being on probation for possession of cocaine; (2) a register of actions from Stearns County indicating that Grace had a probation-violation hearing scheduled for February 7, 2022; (3) court documents that, in an attempt to establish Grace's guilty consciousness, contained information related to Grace's missed court appearance in December 2022; (4) *Spreigl* evidence of Grace's prior convictions for possessing cocaine in Grand Forks, North Dakota in 2021 and for possessing methamphetamine in a backpack in a motor vehicle in Stearns County in 2018; and (5) evidence of Grace's failed drug test, which indicated that he ingested cocaine 48 to 72 hours before the test.

purpose of showing motive, intent, absence of mistake, identity, or a common scheme or plan.” *State v. Asfeld*, 662 N.W.2d 534, 542 (Minn. 2003); accord Minn. R. Evid. 404(b)(1); *State v. Spreigl*, 139 N.W.2d 167, 169-70 (Minn. 1965).

Prior to closing arguments, the district court gave the jury an instruction on consciousness of guilt. In closing arguments, the prosecutor summarized the legislature's intent in enacting the statute under which Grace was charged. The jury subsequently found Grace guilty as charged.

At sentencing, Grace moved for a downward durational departure. The district court denied the motion and sentenced Grace to a presumptive 48-month sentence.

This appeal follows.

DECISION

I.

Grace argues that the prosecutor committed prejudicial misconduct by (a) “misstating the law and successfully advocating for an instruction that adopted [t]his misstatement,” (b) “arguing facts not in evidence to appeal to the sympathies of the jury,” and (c) “intentionally eliciting inadmissible bad acts evidence.” When, as here, a defendant fails to object to alleged prosecutorial misconduct at trial, we apply a modified plain-error test. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under this test, the defendant must show that the prosecutor's conduct constituted (1) error and (2) that the error was plain. *Id.* “If the defendant is successful, the burden then shifts to the state to demonstrate that the error did not affect the defendant's substantial rights.” *Id.* (quotation omitted). Even if these three prongs are met, we “will not grant relief to correct the error unless [the] failure to do so will cause the public to seriously question the fairness and integrity of [the] judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

A. Alleged Improper Jury Instruction

Grace contends that the prosecutor committed misconduct by requesting an instruction that was given to the jury on consciousness of guilt, despite acknowledging to the district court in a motion in limine that such an instruction is not permitted under Minnesota Supreme Court caselaw. The state acknowledges that “a permissive inference instruction regarding the consciousness of guilt evidence . . . would have been improper.” Indeed, in *State v. Valtierra*, the supreme court held that the “district court erred by instructing the jury on the permissive inference that may be drawn from evidence of flight.” 718 N.W.2d 425, 433 (Minn. 2006).

But the state contends that the “district court never provided” such an instruction. The state claims, instead, that the “district court provided a cautionary instruction to the jury with respect to its consideration” of evidence related to Grace’s missed court appearance and false name to a law-enforcement officer, which was “requested by [Grace] at the outset of trial.” And the state argues that, under *State v. Diggins*, 836 N.W.2d 349, 358 (Minn. 2013), such an instruction should be provided.²

In *Diggins*, the district court ruled that evidence that the defendant assaulted and threatened a witness for the prosecution two days before trial was admissible.

² The state asserts that Grace’s prosecutorial-misconduct argument related to the jury instruction should be reviewed under “the traditional plain error standard of review.” But a prosecutor’s misstatement of the law constitutes prosecutorial misconduct. *See State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002). Grace’s argument here is that the prosecutor engaged in misconduct by misstating the law by virtue of providing a jury instruction that was in violation of supreme court precedent. Because Grace’s argument specifically relates to alleged prosecutorial misconduct, the modified plain-error test for alleged prosecutorial misconduct is applicable.

836 N.W.2d at 358. In concluding that the district court did not abuse its discretion in admitting this evidence “to prove consciousness of guilt,” the supreme court noted that the district court “instructed the jury on the limited purpose of the evidence before” the challenged testimony. *Id.* The supreme court then stated that “[t]his cautionary instruction alleviated any possibility that admission of the evidence would unfairly prejudice the jury.” *Id.*

Here, like in *Diggins*, the district court determined that evidence that Grace missed a court appearance and later gave a false name to law enforcement when he was arrested was admissible to show consciousness of guilt. Grace does not challenge that ruling on appeal. Moreover, like in *Diggins*, the district court provided a cautionary instruction related to the consciousness-of-guilt evidence. Because such an instruction is appropriate under *Diggins*, we conclude that there was no error by the prosecutor related to the challenged instruction. And any error certainly is not plain because Grace cites no caselaw, nor does our research reveal any, stating that the prosecutor engaged in misconduct by proposing a cautionary instruction in circumstances similar to those presented here, particularly when Grace requested the instruction. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (stating that an error is plain if it “contravenes case law, a rule, or a standard of conduct”). As such, Grace has not met his burden to show that the prosecutor’s conduct related to the cautionary jury instruction constitutes plain error.

B. Facts Not Offered into Evidence

Grace also argues that the “prosecutor committed misconduct by arguing facts not in evidence and by referencing [his] punishment.” “A prosecutor’s closing argument

should be based on the evidence presented at trial and the inferences reasonably drawn from the evidence.” *State v. Bauer*, 776 N.W.2d 462, 475 (Minn. App. 2009) (quotation omitted), *aff’d* 792 N.W.2d 825 (Minn. 2011). A prosecutor engages in misconduct when he refers to facts that were not admitted as evidence. *State v. Mayhorn*, 720 N.W.2d 776, 788-89 (Minn. 2006). To determine whether prosecutorial misconduct occurred during closing argument, we examine “the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence.” *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

During closing arguments, the prosecutor referenced the legislature’s intent for enacting the law prohibiting possession of drugs in school and park zones. And the prosecutor stated that an offender violating this law is subject to “additional penalties.”

Grace contends that the prosecutor’s references to the legislature’s intent for passing the law prohibiting possession of drugs in a school or park zone and the penalties associated with a violation of that law constitute misconduct because there was no evidence presented at trial related to these topics. But the prosecutor essentially paraphrased the law, and the legislature’s intent for passing the law is clear on its face. Moreover, the enhancement of Grace’s punishment is reflected by the statute under which he was charged. And Grace points to no caselaw indicating that, under similar circumstances, the prosecutor’s statements constitute misconduct. Thus, the prosecutor did not commit error in closing argument, and even if he did, the error was not plain.

C. Elicitation of Inadmissible Evidence

Grace argues that the prosecutor committed misconduct by eliciting inadmissible bad-acts evidence related to his probation status and probation violation. A prosecutor's actions may amount to error or misconduct if the actions are "violations of clear or established standards," or "have the effect of materially undermining the fairness of a trial." *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). "It is generally misconduct for a prosecutor to 'knowingly offer inadmissible evidence for the purpose of bringing it to the jury's attention.'" *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (quoting *State v. Milton*, 821 N.W.2d 789, 804 (Minn. 2012)).

Here, the prosecutor introduced the following evidence, which referenced Grace's probationary status and probation violation: (1) the corporal's body-worn-camera video of the traffic stop, (2) the corporal's interview with Grace at the police station, and (3) a register of actions from Stearns County indicating hearing dates related to a probation violation. Grace contends that, because this evidence was "clearly inadmissible," the prosecutor committed misconduct by "intentionally" eliciting it.³

³ Grace also contends that the prosecutor committed misconduct by intentionally eliciting inadmissible evidence related to his failed drug test and the conditions of his release in this case. But Grace fails to provide any argument supporting his position. See *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (stating that an assignment of error in an appellate brief based on "mere assertion" and not supported by argument or authority is forfeited "unless prejudicial error is obvious on mere inspection"). As such, Grace has failed to meet his burden of showing that the admission of the failed drug test and the conditions of his release was plain error. See *Ramey*, 721 N.W.2d at 302 (stating that an error is plain if it "contravenes case law, a rule, or a standard of conduct").

The state agrees that the plain-error standard of review is applicable to Grace's argument. But the state contends that any error does not implicate prosecutorial misconduct because Grace "ignores the fact that each piece of evidence introduced at trial referring to [Grace's] probation was allowed into evidence only after [Grace's] counsel was given the opportunity to object and specifically stated [that] he had 'no objection' to the evidence after having reviewed the exhibits."

We need not resolve the dispute concerning whether the prosecutor's elicitation of evidence related to Grace's probation violation involves prosecutorial misconduct because we conclude that, even under the modified plain-error standard applicable to prosecutorial misconduct, the state has met its burden to show that any alleged plain error did not affect Grace's substantial rights. Prosecutorial misconduct affects a defendant's substantial rights "if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury's verdict." *State v. Davis*, 735 N.W.2d 674, 681-82 (Minn. 2007). To determine whether there is a reasonable likelihood that the prosecutor's error had a significant effect on the verdict, we "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." *Id.* at 682. It is the state's burden to show that the prosecutor's error did not affect the defendant's substantial rights. *Portillo*, 998 N.W.2d at 248.

Here, we acknowledge the pervasiveness of the evidence related to Grace's probation violation. *See* Minn. R. Evid. 404(b) (providing that evidence of other crimes or bad acts is inadmissible to prove character and action in conformity). But Grace had the

opportunity to rebut the improper evidence, and the evidence against Grace was overwhelming. Evidence was presented that cocaine residue was found in a baggie and a straw that were in a backpack in a vehicle that was driven within 300 feet of both a school and a park. Although Grace denied that the items that tested positive for cocaine were his, the items were found in a backpack that was next to Grace's leg when the vehicle was stopped. Moreover, a wallet containing Grace's identification card, as well as a crumpled piece of paper that was linked to Grace, were found in the backpack. And Grace initially acknowledged that the backpack was his. Finally, to the extent that Grace later claimed that the backpack was not his, he admitted that many of the items in the backpack belonged to him. Therefore, we conclude that the state met its burden to show that any alleged plain error committed by the prosecutor did not affect Grace's substantial rights. And because the state has met this burden, we need not address the fourth prong of the plain-error analysis. *See Pulczinski*, 972 N.W.2d at 359.

II.

Grace also challenges the district court's decision to allow *Spreigl* evidence of his prior drug-related offenses. We apply an abuse-of-discretion standard of review to a district court's admission of *Spreigl* evidence. *State v. Smith*, 9 N.W.3d 543, 561 (Minn. 2024). "A defendant who claims the district court erred in admitting evidence bears the burden of showing the error and any resulting prejudice." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

Under the Minnesota Rules of Evidence, "[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity

therewith,” though it may be admissible “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b)(1). In Minnesota, evidence of other crimes or bad acts is known as “*Spreigl* evidence.” *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998).

To admit *Spreigl* evidence:

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state’s case; and
- (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

Ness, 707 N.W.2d at 686. Grace challenges only the fourth and fifth prongs of this analysis.

A. *Relevance*

In determining whether *Spreigl* evidence is relevant and material, the district court should “consider the issues in the case, the reasons and need for the evidence, and whether there is a sufficiently close relationship between” the prior offense and the charged offense in terms of time, place, or modus operandi. *State v. Courtney*, 696 N.W.2d 73, 83 (Minn. 2005). “[T]he district court must identify the precise disputed fact to which the *Spreigl* evidence would be relevant.” *Ness*, 707 N.W.2d at 686 (quotation omitted).

Here, in seeking to admit evidence of Grace’s prior offenses, the state claimed that the offenses “are relevant to prove his state of mind—intent and/or knowledge.” The district court agreed, stating that the state

has demonstrated, the drug related crimes, especially as they do present themselves to constructive possession do require intent to [be] basically intertwined with knowledge. And then

also, absence of mistake or accident. I think it is important for the jury to know that we do have a situation where this prior conduct created a situation where really this wasn't a mistake, or where there's an absence of intent, or an absence of knowledge, or that this happened by accident. I think the [s]tate has to prove up its case again and meet those elements such as knowingly or with intent. And the Court believes [the state] adequately outlined that in proving those elements in a case like that. It is material to the [s]tate's case to prove up the case against . . . Grace or attempt to do so.

Grace argues that, because his theory at trial was not that he was unaware that the white residue was cocaine, “but rather that the state failed to prove that [he] had dominion and control over the . . . cocaine residue,” his prior drug-related offenses were not “relevant to show that he possessed cocaine on this occasion.” We are not persuaded. Grace was charged under Minn. Stat. § 152.023, subd. 2(a)(4) (2020), which required the state to prove that Grace unlawfully possessed cocaine in a school or park zone. To convict Grace of this offense, the state had to prove that Grace consciously possessed cocaine, either physically or constructively, and that Grace had actual knowledge of the nature of the substance. *See State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Because “knowing” possession was an essential element of the offense under which Grace was charged, evidence of his knowledge was relevant to that element.

Here, the *Spreigl* evidence consisted of a prior conviction of cocaine possession, which demonstrated that Grace had knowledge of the substance on the straw and baggie found in the backpack. Although Grace claims that he never disputed that he was familiar with cocaine or paraphernalia, he did not stipulate to the knowledge element of the offense. As such, Grace's prior conviction of cocaine possession was relevant to the charged offense

because, at the time the district court made its ruling and during the state’s presentation of its case, knowledge was a disputed issue.

Additionally, Grace’s prior conviction of methamphetamine possession in a backpack is relevant because there is a close relationship between that offense and the charged offense in time, place, or modus operandi. *See Courtney*, 696 N.W.2d at 83 (stating that, in determining whether *Spreigl* evidence is relevant and material, the district court should consider “whether there is a sufficiently close relationship between” the prior offense and the charged offense in terms of “time, place, or modus operandi”). In his 2018 offense for possessing methamphetamine, the substance was “located in a backpack found in an area of [a] vehicle in which [Grace] was a passenger and [the backpack] contained documents identifying [Grace].”

The facts in that offense are almost identical to this case, where the cocaine residue was found in a backpack that was near Grace in the vehicle in which Grace was a passenger, and the backpack contained documents identifying Grace. Although the substance in the 2018 offense was methamphetamine and not cocaine, the *Spreigl* evidence “need not be identical in every way to the charged [offense].” *Ness*, 707 N.W.2d at 688 (quotation omitted). Instead, it must be “sufficiently or substantially similar to the charged offense—determined by time, place, and modus operandi.” *State v. Lynch*, 590 N.W.2d 75, 80-81 (Minn. 1999). The *Spreigl* evidence in this case satisfies this standard. As such, the *Spreigl* evidence was relevant to the state’s case.

B. Probative Value as Weighed Against the Prejudicial Effect

Grace further contends that the *Spreigl* evidence was inadmissible “because its prejudicial effect outweighed its minimal probative value.” Indeed, a district court abuses its discretion by admitting *Spreigl* evidence if the probative value of the evidence does not outweigh the danger of prejudice. *See Ness*, 707 N.W.2d at 685-86. But prejudice does not mean the damage to a party’s case “from the legitimate probative force of the evidence.” *State v. Welle*, 870 N.W.2d 360, 366 (Minn. 2015) (quotation omitted). Instead, “it refers to the unfair advantage” resulting from “the capacity of the evidence to persuade by illegitimate means.” *Id.* (quotation omitted).

The district court stated that “in any case where we bring up prior convictions, . . . there is that risk of potential for unfair prejudice.” But the district court noted “the burden on the prosecution to prove that [Grace] did act intentionally or knowingly,” and that the probative value in admitting the evidence “does outweigh the potential for unfair prejudice.”

Grace argues again that, “[b]ecause constructive possession of cocaine—not [his] previous knowledge of cocaine or his previous possession of a different drug—was the consequential and disputed issue at trial, the *Spreigl* evidence had only de minimis relevancy to those facts.” But the state carried the burden to show all elements of the charged offense, and because Grace did not stipulate to any of the elements, they were all disputed elements at trial. As addressed above, Grace’s prior conviction for possessing cocaine was highly relevant to show his familiarity with the substance, and his prior offense

of possessing controlled substances in a backpack in a vehicle was highly probative due to its marked similarity to the charged offense.

Grace further argues that, because the state admitted in closing argument that it did not need the *Spreigl* evidence to obtain a conviction, the probative value of the evidence was minimal. We acknowledge that the state's case was very strong. *See Ness*, 707 N.W.2d at 690 (instructing that “courts should address the need for *Spreigl* evidence in the context of balancing the probative value of the evidence against its potential for unfair prejudice”). But the *Spreigl* evidence here was particularly relevant to the state's case. And Grace fails to show that the state gained some “unfair advantage” by the admission of the evidence. *Welle*, 870 N.W.2d at 366 (quotation omitted). And, importantly, the district court provided a cautionary instruction to the jury before closing argument, which lessened the likelihood that the jury would give undue weight to the evidence. *See Kennedy*, 585 N.W.2d at 392 (noting that providing cautionary instructions lessened the likelihood that the jury would give undue weight to the evidence). Thus, Grace cannot show that the district court abused its broad discretion in admitting the *Spreigl* evidence.

C. Prejudice

Finally, even if the district court abused its discretion in admitting the prior offenses, Grace is entitled to a new trial only if there is a reasonable possibility that the wrongfully-admitted evidence significantly affected the verdict. *See State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). To determine if there is a reasonable possibility that inadmissible evidence of a prior conviction significantly affected a verdict, we consider three factors, including whether (1) “the district court instructed the jury to limit the use of the other

crime evidence,” (2) “the [s]tate dwelled on the evidence in closing argument,” and (3) “the evidence of guilt was overwhelming.” *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016) (quotation omitted). “A defendant who claims the [district] court erred in admitting evidence bears the burden of showing an error occurred and any resulting prejudice.” *Griffin*, 887 N.W.2d at 261.

Here, the record reflects that the state discussed the *Spreigl* evidence in both its main closing argument and rebuttal, which weighs against the state. But the district court read the standard *Spreigl* limiting jury instruction prior to closing arguments. *See* 10 *Minnesota Practice*, CRIMJIG 2.03 (2024). And “[c]ourts presume that juries follow the instructions they are given.” *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). Moreover, as addressed above, the state’s evidence was overwhelming. Accordingly, under these circumstances, Grace is unable to show that any error in admitting the *Spreigl* evidence significantly affected the verdict.⁴

III.

Finally, Grace challenges the district court’s denial of his motion for a downward durational departure. We review a district court’s sentencing-departure decision for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). We “will not ordinarily interfere with a sentence falling within the presumptive sentence range, either

⁴ Grace argues that “he is entitled to a new trial based on the cumulative impact” of the trial errors. But, at most, the only trial error consisted of the alleged prosecutorial misconduct related to the offering of evidence of Grace’s probation violation. And as addressed above, this error did not affect Grace’s substantial rights.

dispositionally or durationally, even if there are grounds that would justify departure.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted).

The Minnesota Sentencing Guidelines prescribe a sentence or sentencing range that is “presumed to be appropriate.” Minn. Sent’g Guidelines 2.D.1 (2021). “A sentencing court must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). “Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case.” *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). “A downward durational departure is justified only if the defendant’s conduct was significantly less serious than that typically involved in the commission of the offense.” *Solberg*, 882 N.W.2d at 624 (quotation omitted).

Grace argues that the district court abused its discretion in denying his departure motion because his “conduct was less serious than in the typical offense.” We disagree. Grace’s conduct fits squarely within the statute under which he was convicted. *See* Minn. Stat. § 152.023, subd. 2(a)(4). As such, his conduct was not less serious than the charged offense.

Grace further argues that his departure motion should have been granted because the “Polk County Attorney’s Office charges drug possession in a school/park zone at a much higher rate than the rest of the state.” But Grace provides no authority stating that a county attorney’s decision to prosecute a certain offense more often than other prosecutors

is a mitigating factor warranting a lesser sentence. And the district court was under no obligation to depart from the presumptive sentence even if there was a valid basis to do so. *See State v. Pegel*, 795 N.W.2d 251, 253-54 (Minn. App. 2011) (stating that “the mere fact that a mitigating factor is present in a particular case does not obligate the court to place [the] defendant on probation or impose a shorter term than the presumptive term” (quotation omitted)). Moreover, a district court generally does not abuse its discretion in imposing a sentence within the presumptive range identified in the Minnesota Sentencing Guidelines so long as it carefully considers the testimony and information before it on the departure motion. *State v. Van Ruler*, 378 N.W.2d 77, 80-81 (Minn. App. 1985). Under these circumstances, Grace is unable to show that the district court abused its discretion in denying Grace’s motion for a downward durational departure.

Affirmed.