

*This opinion is nonprecedential except as provided by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
A24-1728**

State of Minnesota,
Respondent,

vs.

Camarian Derelle Banks,
Appellant.

**Filed September 22, 2025
Affirmed
Wheelock, Judge**

Clay County District Court
File No. 14-CR-23-2786

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

Brian J. Melton, Clay County Attorney, Megan J. Kelly, Assistant County Attorney,
Moorhead, 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 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NONPRECEDENTIAL OPINION

WHEELLOCK, Judge

Appellant challenges his first-degree burglary conviction in a direct appeal, specifically contesting the district court's admission of victim's hearsay statements captured by an officer's body-worn camera during the officer's interview with victim and arguing that the statements do not fall within the excited-utterance exception to the rule excluding hearsay. Appellant also challenges the district court's denial of his motion for a downward dispositional sentencing departure, arguing that the district court abused its discretion by denying it. In a pro se supplemental brief, appellant argues that the jury's finding of guilt on the burglary charge is inconsistent with its finding of not guilty on the domestic-assault charge. We affirm.

FACTS

In August 2023, appellant Camarian Derelle Banks broke a window in victim A.M.'s ground-level apartment and entered through it. An individual nearby heard loud pounding, glass breaking, and a woman screaming, so he called law enforcement and reported the incident.¹ Multiple officers responded to the scene; one officer interviewed A.M. The following is a summary of the officer's interview with A.M.

Upon making contact with A.M., the officer asked her what happened. A.M. explained that Banks broke into her apartment through a window. She appeared to nervously laugh when she said this. She had Banks's blood on her arms, and she also cried

¹ Because the caller refused to provide his information, law enforcement could not identify him.

as she recounted the incident. A.M. said that Banks was her ex-boyfriend. She explained that her neighbors heard Banks breaking in and that, as he emerged through the window, he ended up “on top of her” and that is how his blood got on her. The officer asked A.M. if Banks said anything to her as this was happening. A.M. replied that, before Banks burst through her window, he said, “I’m going to kill you,” through it.

A.M. said that, once Banks was inside, he made a motion “to choke her.” She gestured with her arms about how overwhelmed she was, saying that the incident happened fast and was disorienting and frightening. The officer asked how the altercation ended, and A.M. explained that Banks got off of her because her neighbors came down to her apartment unit and told Banks to leave her alone. A.M. reiterated several statements that her neighbors allegedly made when they intervened. She said the following:

- “That’s why the neighbors said, ‘What the hell’s going on?’”
- “They were telling him, ‘Get away from her, nobody wants to do nothing’”;
- “They were like, ‘No just leave her alone’”;
- “They intervened and were like, ‘What’s going on?’” and
- “They were like, ‘Are you ok?’”

Neither A.M. nor law enforcement ever identified these neighbors, and they were not called as witnesses during trial.

Also during the interview, A.M. confirmed that Banks had a no-contact order against her, and the officer explained to her that, although Banks was the protected party under the no-contact order, she was not at fault in this incident because Banks came to her.

At the end of the interview, A.M. again became emotional as she said that she felt very afraid during this encounter.

Respondent State of Minnesota initially charged Banks with four offenses, but it dismissed two of them in advance of trial. Banks exercised his right to a jury trial on his remaining charges: count 1, first-degree burglary with assault of a person within the building or on the building property in violation of Minn. Stat. § 609.582, subd. 1(c) (2022), and count 2, misdemeanor domestic assault causing fear of immediate bodily harm or death in violation of Minn. Stat. § 609.2242, subd. 1(1) (2022).

The district court held a two-day trial. Prior to the state's formal request to introduce the interviewing officer's body-worn camera footage, Banks objected to the portions of A.M.'s interview in which she recounted her neighbors' statements. The state responded that A.M.'s neighbors' statements in the interview were not hearsay because the state was offering them to show "the effect on Mr. Banks that he heard these statements from the neighbors and ceased the assault." After much consideration, the district court concluded that the statements did not "fall within the rule of hearsay because . . . they [were not] being used to prove the truth of the matter asserted."

During trial, the state called A.M. to testify against Banks; however, upon being called to the stand, A.M. did not go into much detail about the incident. The state then called the interviewing officer, who testified that he responded to the dispatcher's referral of the anonymous 911 call at approximately 6:00 a.m. Although the officer could not recall approximately how much time had passed between the 911 call and his arrival to A.M.'s apartment, he described A.M.'s demeanor as distraught, explaining that "she appeared to

be someone who had just gone through a stressful situation.” Additionally, the officer’s body-worn camera footage indicates that he began his interview with A.M. at approximately 6:15 a.m. When the state attempted to introduce the body-worn camera footage of the officer’s interview with A.M., Banks objected.

Banks did not previously object to the admission of body-worn camera footage of A.M.’s interview with the officer because he assumed that A.M. would testify about the statements she made in the footage. However, because A.M.’s direct examination was brief and she did not testify to much of what she disclosed in that interview, Banks argued that her statements in the video were inadmissible hearsay. The state contended that A.M.’s statements were admissible as excited utterances. In response, Banks argued that the excited-utterance exception cannot apply because of the duration of the interview and A.M.’s demeanor during the interview. The district court concluded that the interview was admissible under the excited-utterance and present-sense-impression exceptions to the rule excluding hearsay. The district court then allowed the entire interview to be viewed by the jury.

Although the interview was not the centerpiece of the state’s closing argument, the state discussed it at different times throughout its closing argument. And the jury requested to watch the body-worn camera footage again during their deliberations. The district court granted this request.

The jury returned a guilty verdict for count 1, first-degree burglary with assault of a person, and a not-guilty verdict for count 2, domestic assault.

The district court initially held a sentencing hearing at which Banks requested that the district court continue the hearing pending an eligibility determination for veterans' court; the district court granted this request. The veterans' treatment court program agreed that, if the district court granted Banks's dispositional departure motion, he could be accepted into veterans' court. At the rescheduled sentencing hearing, Banks read a letter that he had written in which he expressed remorse and apologized for his actions. The district court ultimately determined that Banks was not particularly amenable to probation and imposed a presumptive sentence of 41 months' imprisonment, which is at the low end of the guidelines range.

Banks appeals.

DECISION

- I. The district court did not abuse its discretion by admitting A.M.'s statements to the officer under the excited-utterance exception, and the admission of A.M.'s recitations of her neighbors' statements did not substantially affect the jury's verdict.**

Banks urges this court to reverse his conviction for first-degree burglary, arguing that the district court abused its discretion when it admitted the officer's body-worn camera footage of his interview of A.M., both as to A.M.'s hearsay statements describing the incident and A.M.'s hearsay-within-hearsay recitations of her neighbors' statements.

"Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). This "deferential standard of review on these matters cuts both ways—whether the district court admits or excludes the evidence."

State v. Tapper, 993 N.W.2d 432, 439 (Minn. 2023). A district court abuses its discretion when its “ruling is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015) (quotation omitted). If an evidentiary ruling is erroneous, appellate courts “will not reverse if the error was harmless.” *State v. Heller*, 12 N.W.3d 452, 464 (Minn. 2024).

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is inadmissible unless an exception to the hearsay rule applies. Minn. R. Evid. 802; *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006).

The number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the trial court’s decision-making process in either admitting or excluding a given statement. The complexity and subtlety of the operation of the hearsay rule and its exceptions make it particularly important that a full discussion of admissibility be conducted at trial.

Manthey, 711 N.W.2d at 504.

As to A.M.’s statements describing the incident, Banks maintains that A.M. was not under stress or fear during her interview with the officer and that, therefore, the district court abused its discretion when it determined that A.M.’s out-of-court statements were excited utterances and admitted them.² Banks also contends that the district court’s

² Banks also maintains that the district court erroneously relied on the present-sense-impression exception to the rule excluding hearsay to admit A.M.’s statements. Because we conclude that the district court did not abuse its discretion when it determined that A.M.’s statements were admissible under the excited-utterance exception to the rule excluding hearsay, we do not reach this argument.

observation about A.M. becoming “more upset as she [was] speaking” was significant because it “acknowledge[s] that A.M. was not upset as the interview began” and shows that the district court’s findings were “against logic and the facts in the record.”

The excited-utterance exception allows admission of a “statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition.” Minn. R. Evid. 803(2). Three requirements must be met for hearsay to qualify as an excited utterance: (1) there was a startling event or condition; (2) the hearsay statement relates to the startling event or condition; and (3) the declarant was “under a sufficient aura of excitement caused by the event or condition to insure the trustworthiness of the statement.” *State v. Daniels*, 380 N.W.2d 777, 782 (Minn. 1986) (quoting Minn. R. Evid. 803(2) 1977 advisory comm. cmt.). “The key consideration is whether the declarant was under an aura of excitement.” *Tapper*, 993 N.W.2d at 437 (quotation omitted). The district court, “in its discretion, determines whether the declarant was under the aura of excitement, and we review the determination for an abuse of discretion.” *State v. Martin*, 614 N.W.2d 214, 224 (Minn. 2000) (quotation omitted). There are “no strict temporal guidelines for admitting an excited utterance” so long as the declarant is still under the stress of excitement caused by the event. *Id.* at 223-24 (quotation omitted).

After reviewing the body-worn camera footage of the officer’s interview of A.M., we conclude that the district court did not abuse its discretion in admitting her testimony under the excited-utterance exception. Regarding the “startling event,” Banks’s act of shattering a window in A.M.’s apartment so that he could enter her room is a startling

event. Regarding whether the statements “relate to that startling event or condition,” the statements A.M. made during her interview with the officer described Banks’s forced entry into A.M.’s apartment. And regarding the “aura of excitement,” the body-worn camera footage supports the determination that A.M. was under the stress of Banks’s act of breaking and entering into her apartment while she was speaking with the officer because she was frantic, emotional, and confused.

The record reflects that A.M.’s statements were made relatively soon after the forced entry occurred—the officer interviewed A.M. roughly 15 minutes after a dispatcher alerted law enforcement to the incident. *See Daniels*, 380 N.W.2d at 783-84 (affirming the admission of statements made “within an hour” of a fire); *State v. Berrisford*, 361 N.W.2d 846, 850 (Minn. 1985) (affirming the admission of a statement made “just 90 minutes after the murder”). Because we conclude that the statements A.M. made during her interview with the officer meet the requirements of an excited utterance, and because “[e]videntiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion,” *Ali*, 855 N.W.2d at 249, we conclude that the district court did not abuse its discretion when it admitted the statements A.M. made during her interview with the officer.

As to A.M.’s recitations of statements her neighbors made during the incident, Banks argues that these statements were inadmissible hearsay within hearsay. The state argues that the neighbors’ statements were not hearsay because the state was not offering them for the truth of the matters asserted. The district court agreed with the state and admitted them.

“‘Hearsay’ is a statement . . . offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Statements that are not offered for the truth of the matter asserted are not hearsay. *State v. Moua*, 678 N.W.2d 29, 37 (Minn. 2004). Rule 805 provides that all “[h]earsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception to the hearsay rule provided.” Minn. R. Evid. 805.

“Harmless-error review considers whether a reasonable possibility exists that the error significantly influenced the verdict, not merely whether the other properly admitted evidence was sufficient to support the verdict.” *State v. Bigbear*, 10 N.W.3d 48, 51 (Minn. 2024). Appellate courts “generally will not reverse a verdict even when improper evidence is presented to the jury unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Id.* at 54 (quotations omitted). Appellate courts consider four nonexclusive factors to determine whether there is a reasonable possibility that erroneously admitted evidence significantly affected a verdict:

- (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.

Id. (quotation omitted).

We assume without deciding that the district court’s admission of these statements was erroneous and review the decision for harmless error. *See State v. Peltier*, 874 N.W.2d 792, 803 (Minn. 2016) (conducting harmless-error analysis of alleged evidentiary error without analyzing whether it was an error). As to the first factor—the manner in which the

party presented the evidence—the state did not present the neighbors’ statements outside of the body-worn camera footage. However, Banks’s trial counsel referred to the neighbors’ statements during his cross-examination of the interviewing officer and his closing argument for the purpose of impeaching A.M. We thus conclude that this factor weighs against a determination that the admission of A.M.’s recitation of the neighbors’ statements affected Banks’s substantial rights.

As to the second factor—whether the evidence was highly persuasive—the neighbors’ statements were not corroborated by their own testimony. In fact, we have not found an explanation of who the neighbors were in the record. The challenged statements were generic attempts to understand what was going on and thus do not have much, if any, persuasive value. Because we are convinced that the statements were not highly persuasive, their admission did not affect Banks’s substantial rights.

As to the third factor—whether the party who offered the evidence used it in closing argument—the state did not refer to the neighbors’ statements during closing argument, but Banks’s trial counsel did. We therefore conclude that this factor weighs against a determination that the admission of A.M.’s recitation of the neighbors’ statements affected Banks’s substantial rights.

As to the fourth factor—whether the defense effectively countered the evidence—Banks had no opportunity to directly counter the neighbors’ statements because the neighbors were not called as witnesses. However, Banks’s trial counsel did attempt to cross-examine the officer about A.M.’s failure to mention the neighbors’ hearsay statements during her direct examination. And, during closing argument, Banks’s trial

counsel pointed out that “there was absolutely no testimony from [A.M.] about any neighbors being involved in this incident at all.” However, because Banks had no opportunity to cross-examine the neighbors themselves, we conclude that this factor weighs in favor of determining that the admission of these statements affected Banks’s substantial rights.

Because only one factor weighs in favor of concluding that the admission of A.M.’s recitation of the neighbors’ alleged statements affected Banks’s substantial rights, we conclude that the statements did not have a significant impact on the jury’s verdict and were therefore harmless.

II. The jury’s acquittal of Banks on the domestic-assault charge is not inconsistent with its finding of guilt on his first-degree burglary charge.

In his pro se supplemental brief, Banks argues that the jury’s simultaneous not-guilty verdict on his domestic-assault charge and its guilty verdict on his first-degree burglary charge amounts to an inconsistent verdict.³ “Disputed evidence will support the jury’s conviction on one charge, even when the verdict is arguably inconsistent with the jury’s acquittal on a second charge,” because the verdicts could show that “the jury

³ Banks makes numerous other arguments in his supplemental brief that he does not support with legal authority or references to the record. Appellate courts do not “consider . . . claims on appeal that are unsupported by either arguments or citations to legal authority.” *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Further, “[a]n assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *State v. Yang*, 774 N.W.2d 539, 552 (Minn. 2009) (quotation omitted). Here, because Banks’s claims are based on factual assertions that are not supported by the record and lack legal authority, we conclude that his remaining supplemental-brief arguments are forfeited.

exercised leniency.” *State v. Thomas*, 467 N.W.2d 324, 325 (Minn. App. 1991). Here, because disputed evidence supports the jury’s findings, “even when the verdict is arguably inconsistent with the jury’s acquittal on a second charge,” *id.*, we are not persuaded that the jury’s acquittal on Banks’s domestic-assault charge affects the sufficiency of the evidence supporting its finding of guilt on his first-degree burglary charge.

III. The district court did not abuse its discretion when it denied Banks’s motion for a downward dispositional sentencing departure.

Banks argues that the district court abused its discretion when it denied his motion for a downward dispositional sentencing departure. “Whether to depart from the sentencing guidelines rests within the district court’s discretion, and the district court will not be reversed absent an abuse of that discretion.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011). “Only in a rare case will a reviewing court reverse the imposition of a presumptive sentence.” *Id.*

District courts “must order the presumptive sentence provided in the sentencing guidelines unless substantial and compelling circumstances warrant a departure.” *Id.* (quotation omitted). “If the district court has discretion to depart from a presumptive sentence, it must exercise that discretion by deliberately considering circumstances for and against departure.” *State v. Mendoza*, 638 N.W.2d 480, 483 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2002). However, “the mere fact that a mitigating factor is present in a particular case does not obligate the court to place defendant on probation or impose a shorter term than the presumptive term.” *Pegel*, 795 N.W.2d at 253-54 (quotation omitted).

In hearing Banks’s motion, the district court considered the information before it and provided reasoning to support its determination that Banks was not particularly amenable to probation. The district court observed that, although Banks expressed remorse for his conduct at his sentencing hearing, he had not previously expressed remorse for his actions. It acknowledged “that the veterans’ court team has agreed to accept [him] if the Court grant[ed]” his motion. However, it determined that there was not enough evidence to support that Banks was particularly amenable to probation and treatment. Thus, the district court “follow[ed] the guideline sentence at the low end of the box” and committed Banks to the commissioner of corrections for 41 months.

Here, like the appellant’s argument in *Pegel*, Banks’s argument “blurs the distinction between a district court’s failure to exercise its discretion to depart from a presumptive sentence and a district court’s abuse of its discretion when determining whether to depart from a presumptive sentence.” *Id.* at 253. We conclude that the district court did not abuse its discretion when it imposed a presumptive disposition.

Affirmed.