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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1755**

State of Minnesota,
Respondent,

vs.

Tony Allen Gohl,
Appellant.

**Filed October 20, 2025
Affirmed
Larkin, Judge**

Carlton County District Court
File No. 09-CR-23-1872

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

Jeffrey L.H. Boucher, Carlton County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of attempted first-degree criminal sexual conduct, arguing that the district court judge erred by declining to recuse herself after he withdrew his guilty pleas to indecent exposure and kidnapping and that the district court

abused its discretion by admitting evidence that was irrelevant, unfairly prejudicial, and inadmissible. Appellant alleges additional errors in a pro se appellate brief. We affirm.

FACTS

Appellant Tony Allen Gohl was convicted of attempted first-degree criminal sexual conduct following a jury trial. The victim was Gohl's niece, who was born in January 2011. Until October 2023, Gohl regularly babysat the victim. On Saturday October 21, 2023, while babysitting the victim and her younger sister, Gohl went into the bathroom with the victim. Although Gohl disputes how it occurred, Gohl acknowledges that he became nude from the waist down, with his penis exposed. Gohl told the victim to "suck it" or asked the victim "what if I said suck it?"

The victim did not immediately report the incident because, as she testified at trial, she was "very scared." At some point, the victim told a friend at school that "[m]y uncle almost raped me." The next day, the friend reported the victim's statement to a school counselor. The school counselor met with the victim who told the counselor that her caretaker went into the bathroom with her and pulled down his pants. The counselor called the victim's mother, who quickly came to the school. When the victim's mother arrived, the counselor and the victim explained the situation. The victim told her mother the "exact same story . . . with a little bit more detail" and whispered in her mother's ear that he wanted her to suck it. The counselor reported the incident to the police.

The victim's mother went to the police department and provided a statement. Next, the victim's mother took the victim to First Witness, a child-advocacy center. First Witness interviewed the victim and provided a recording of the interview to the police.

Police officers went to Gohl's home and arrested him. Gohl agreed to provide a statement. During his statement, Gohl admitted that he had asked the victim not to sit on his lap anymore because it might "trigger" him.

On October 30, 2023, the state charged Gohl with attempted first-degree criminal sexual conduct, attempted second-degree criminal sexual conduct, kidnapping, indecent exposure while confining or restricting a person's freedom, soliciting a child to engage in sexual conduct, and fifth-degree misdemeanor assault.¹

On February 1, 2024, Gohl appeared before the district court for a plea hearing. The state and Gohl informed the court that Gohl would plead guilty to kidnapping and child solicitation. When providing a factual basis for his guilty pleas, Gohl admitted that he confined the victim to the bathroom and asked her, "what if I told you to suck it?" But Gohl disputed that his statement constituted solicitation. When questioned by the court about his intent, Gohl explained that he had "no intentions [of] it being sexual." Instead, Gohl said he was trying "to convey [to] her that you need to be able to stand up for yourself and fight situations in life" by having the victim pretend that he was "the bad guy."

The court was concerned that the factual basis for Gohl's guilty plea to child solicitation was inadequate. After further questioning, defense counsel conceded that the guilty plea to the solicitation charge was not supported by a sufficient admission of guilt. Gohl ultimately pleaded guilty to indecent exposure and kidnapping. Later, Gohl moved

¹ The state dismissed the misdemeanor assault charge prior to trial and dismissed the kidnapping charge on the first day of trial.

the district court to withdraw his guilty pleas because they were not supported by an adequate showing of guilt. The district court granted Gohl's motion for plea withdrawal.

After Gohl withdrew his guilty pleas, defense counsel asked the district court judge to consider disqualifying herself because Gohl was concerned that the judge was "privity to information that's not otherwise available" as a result of "having heard his disclosures that were in addition to and over and above what was provided in the police reports." The district court judge declined to recuse herself, explaining that she would not be the factfinder at Gohl's jury trial, that she was confident that she could continue to be fair and impartial, and that she agreed that the factual basis for Gohl's withdrawn guilty pleas was insufficient to establish his guilt.

At the ensuing jury trial, the victim testified that on the date in question Gohl went into the bathroom with her, locked the door, and forcibly prevented her from leaving. The victim further testified that Gohl removed his pants and underwear, exposed his penis, and repeatedly told her to "suck it." She testified that when she said no, Gohl told her to stand up and bend over. The victim testified that her younger sister was outside the bathroom crying and banging on the door during the incident. According to the victim, the whole encounter lasted "about a minute or two" and concluded when Gohl "pulled up his underwear and pants . . . and walked out."

Gohl testified in his own defense. He testified that he had "no intentions" of touching the victim "in any sexual manner." He also testified that he never intended to "become nude." Instead, Gohl claimed that he intended "[t]o show [the victim] that she had to be stronger to fight her way out of situations." Gohl further claimed that, while he

and the victim were in the bathroom, he asked the victim to pretend he was the “bad guy.” Gohl testified that when the victim told him he was not the “bad guy,” he turned around and pulled down his pants only revealing the shorts he had on underneath and said, “What if I was dressed like the bad guy now?” He testified that he said, “what if I was the bad guy and said to do things?” According to Gohl, he first said, “open your mouth,” because he didn’t want to “say anything gross.” When the victim did not understand, he said “What if I said suck it?” At this point, Gohl stated that the victim became upset, and he reassured her he was not going to hurt her. Then, according to Gohl, the victim’s sister pushed the door open and “reached in to grab ahold of [him]” and in doing so, grabbed Gohl’s shorts and lowered them.

The jury found Gohl guilty of the four charges that were tried. The district court entered a judgement of conviction for attempted first-degree criminal sexual conduct and sentenced Gohl to serve 108 months in prison.

Gohl appeals.

DECISION

I.

Gohl contends that the district court judge erred by refusing to recuse herself after allowing Gohl to withdraw his guilty pleas. “Under Minnesota Code of Judicial Conduct Rule 2.11(A), a judge is disqualified from presiding over ‘any proceeding’ in which the judge’s impartiality might be reasonably questioned.” *State v. Malone*, 963 N.W.2d 453, 464 (Minn. 2021). Whether a judge is disqualified under the Code of Judicial Conduct is

a question of law that we review de novo. *State v. Mouelle*, 922 N.W.2d 706, 712-13 (Minn. 2019); *Malone*, 963 N.W.2d at 464.

“In deciding whether disqualification is required, the relevant question is whether a reasonable examiner, with full knowledge of the facts and circumstances, would question the judge’s impartiality.” *Mouelle*, 922 N.W.2d at 713 (quotation omitted). “A reasonable examiner is an objective, unbiased layperson” *Malone*, 963 N.W.2d at 464 (quotation omitted). However, “the mere fact that a party declares a judge partial does not in itself generate a reasonable question as to the judge’s impartiality.” *Mouelle*, 922 N.W.2d at 713 (quotation omitted). Instead, our review “begin[s] with a presumption that a judge has discharged his or her duties properly.” *Malone*, 963 N.W.2d at 464 (quotation omitted). Specifically, we “presume that judges are capable of setting aside collateral knowledge they possess and are able to approach every aspect of each case with a neutral and objective disposition.” *Mouelle*, 922 N.W.2d at 713 (quotation omitted).

Gohl argues that “an objective, unbiased layperson with full knowledge of the facts and circumstances would reasonably question the continued impartiality of a judge who helped elicit, then accepted, and then rejected a defendant’s guilty pleas during which the defendant made incriminating admissions far beyond what he had told the police.” But an assumption that “a reasonable examiner loses confidence in a district court’s impartiality whenever the court learns information that is prejudicial to the defendant does not overcome the presumption that district courts set aside collateral knowledge and approach every aspect of each case with a neutral and objective disposition.” *Id.* (quotation omitted).

A judge is not disqualified merely because “she has knowledge of information that reflects negatively on a defendant.” *Id.* As the Minnesota Supreme Court has explained:

In a typical criminal case, the district court judge must consider pretrial motions that challenge items of evidence that may reflect adversely on the defendant. A motion to exclude a defendant’s prior criminal history from presentation at trial, for instance, often involves highly prejudicial evidence. Sometimes, the challenged evidence is even incriminating—as with disputes concerning the admission of a defendant’s recorded confession under the *Miranda* rule. Yet in these circumstances we do not doubt the district court judge’s ability to set aside her knowledge of prejudicial information and approach every aspect of each case with a neutral and objective disposition. Instead, we presume that the district court is able to set aside knowledge prejudicial to the defendant because doing so is necessary to the proper discharge of her duties.

Id. at 713-14 (footnote omitted) (quotation and citation omitted).

In sum, the district court’s incidental exposure—during a plea hearing—to any additional information regarding Gohl’s participation in the alleged offense would not alone cause an objective, unbiased layperson with full knowledge of the facts and circumstances to question the district court’s impartiality.

Gohl’s reliance on *State v. Pero* does not persuade us otherwise. 590 N.W.2d 319 (Minn. 1999). In *Pero*, the supreme court reviewed the district court’s denial of motion to recuse and considered the defendant’s argument that recusal was required under an advisory comment to Minnesota Rule of Criminal Procedure 15.04. *Id.* at 326. That comment states: “Whenever a *plea agreement* has been rejected, the defendant must be afforded the opportunity to withdraw a plea of guilty, if entered” and “[i]f the defendant has made factual disclosures tending to disclose guilt of the offense charged, the judge

should disqualify himself or herself from the trial of the case.” Minn. R. Crim. P. 15 cmt. (emphasis added).

The advisory comment that the *Pero* court considered is specific to rule 15.04, which governs plea discussions and the related responsibilities of the district court. 590 N.W.2d at 326; *see* Minn. R. Crim. P. 15.04, subd. 3(2), (stating that the district court must “reject or accept” a proposed guilty plea “on the terms of the plea agreement” and that if the court rejects a proposed plea agreement, it must “advise the parties in open court and then call upon the defendant to either affirm or withdraw the plea”). The comment expressly addresses circumstances in which “a plea agreement has been rejected.” Minn. R. Crim. P. 15 cmt. In other words, rule 15.04 and the relevant advisory comment apply when the state and the defendant have proposed a plea agreement to the court and the defendant is willing to plead guilty pursuant to that plea agreement, but the district court rejects the agreement because the “interest of justice” would not be served by the agreement. Minn. R. Crim. P. 15.04, subd. 3(3).

This is not a case like *Pero*, where the district court rejected the defendant’s guilty plea based on the terms of a proposed plea agreement. Instead, the district court here accepted Gohl’s guilty pleas and later granted his request to withdraw them after determining that they did not establish his guilt. Such plea withdrawal is governed by Minn. R. Crim. P. 15.05. The advisory comment to rule 15.05 does not include any language suggesting that recusal should be considered if the district court grants a defendant’s motion for plea withdrawal, and regardless, such language would not be binding on the district court. *See Pero*, 590 N.W.2d at 326 (stating, “advisory comments

are not binding”). Given this distinct procedural posture, the district court did not abuse its discretion by refusing to recuse based on a nonbinding advisory comment to an inapplicable rule.

II.

Gohl contends that the district court erroneously admitted portions of his statement to the police in which he indicated that he might be “triggered” if the victim sat on his lap.

“Evidentiary rulings rest within the sound discretion of the district court, and we 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. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). Gohl bears the burden to establish that the district court abused its discretion and that he was prejudiced as a result. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Gohl argues that the district court abused its discretion by admitting the following statements that he made to the police, which, according to Gohl’s brief to this court, were redacted as follows:

Question: And if you actually touched her or just asked her to touch you?

Response: Not once. Not ever. The only thing I’ve ever asked that kid not to do was not to sit on my lap. I specifically asked her this, I was like, [the victim], I’m going to ask you one thing. Just don’t sit on my lap anymore. She used to come sit on my lap and that -- it, it’d irritate me.

Question: Why?

Response: ~~Because of my past.~~ I don't want people sitting on me and then being, like, well, I sat on his lap and all the sudden uh -- you know, he uh -- nothing really. I mean, I couldn't get an erection from that sh-t anyways if I wanted to, but -- I don't want to so I wouldn't want to, and like, I -- stay on your side so I don't have to worry about it type sh-t.

Question: So you weren't worried that her sitting on your lap would give you an erection?

Answer: I was worried about that, but I wasn't worried about it because I asked her not to do things like that. If there was a situation where I felt like I could be triggered. ~~Because of all my therapy, I know all this sh-t.~~ If I was to be triggered I can stop, so, okay, I need to ask you not to do this because it might trigger me, so.

Question: Okay, is there anything else that [the victim] would do that would trigger you?

Response: No, that was pretty much it. The only time I ever asked her not to do anything was not to sit on me.

Gohl asserts that “with or without redactions,” the recording was inadmissible. Gohl specifically relies on Minn. R. Evid. 401, 403, and 404(a). Gohl argues that the evidence was not relevant, was substantially prejudicial, and was inadmissible character evidence.

Evidence must be relevant to be admissible. Minn. R. Evid. 402. Evidence is relevant if it has a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. Gohl argues that the recording “had no real relevance to the charged offense because Gohl was not charged with attempting to sexually assault [the victim] while she was sitting on his lap.”

To prove Gohl guilty of attempted first-degree criminal sexual conduct, the state had to prove that Gohl took a substantial step toward completing the crime while having the intent to commit a sexual assault. Minn. Stat. § 609.342, subd.1a(e) (2022); Minn. Stat. § 609.17, subd. 1 (2022). The state also had to prove that Gohl intended to engage in sexual conduct to prove him guilty of solicitation of children to engage in sexual conduct. Minn. Stat. § 609.352, subd. 2 (2022). In arguing that the alleged error was not harmless, Gohl recognizes that the challenged statement “bore directly on the main issue in this case—whether [he] intended for [the victim] to give him oral sex.” Because the evidence was probative of Gohl’s intent, the evidence was relevant.

Gohl also argues that his statement was improperly admitted in violation of rules 403 and 404(a). Under rule 403, relevant evidence may nevertheless be “excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403. Gohl argues that the recording “had great potential for unfair prejudice” because with or without the redactions, “jurors would likely infer from Gohl’s remarks about not wanting to be ‘triggered’ by [the victim] sitting on his lap that he was sexually excitable by young children and was, therefore, the type of person who would sexually assault [the victim] if the opportunity arose.” Gohl further argues that the evidence served no other purpose than to prove his sexual intent based on sexual proclivities. But Gohl’s statement did not regard young children in general or a general sexual attraction to young children. It was specific to the victim.

Under rule 404(a), except under limited circumstances, “[e]vidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” Minn. R. Evid. 404(a). “Character evidence” is “[e]vidence regarding someone’s general personality traits or propensities, of a praiseworthy or blameworthy nature” *Black’s Law Dictionary* 696 (12th ed. 2024). Gohl argues that evidence of his “sexual proclivities was *not* admissible to prove that he had the intent to sexually assault [the victim].” Gohl relies in part on *State v. Migglar*, in which we held that child pornography magazines were inadmissible to show the defendant’s propensity to sexually abuse children. 419 N.W.2d 81, 85 (Minn. App. 1988).

This case is readily distinguishable from *Migglar*. As the state observes, Gohl “never mentioned other young children” in the challenged statement, he only mentioned the victim. Thus, unlike the evidence of the defendant’s general propensity to sexualize children in *Migglar*, Gohl’s statement related specifically to the victim; it did not suggest that he has a general character trait that sexualizes children. Moreover, Gohl’s statement was equivocal. He disputed that he might be “triggered” by the victim sitting on his lap, and stated that: “I couldn’t get an erection from that sh-t anyways if I wanted to but -- I don’t want to so I wouldn’t want to” And when the police clarified, “[s]o you weren’t worried that her sitting on your lap would give you an erection?” Gohl equivocated:

I was worried about that, but I wasn’t worried about it because I asked her not to do things like that. If there was a situation where I felt like I could be triggered. If I was to be triggered I can stop, so, okay, I need to ask you not to do this because it might trigger me, so.

Gohl argues that the challenged statement served “no other purpose” than to prove his sexual intent based on his sexual proclivities. But Gohl’s statement does not indicate that he is sexually attracted to children in general. Instead, it suggested sexual intent based on a specific sexual attraction to the victim in this case. Accordingly, we are not persuaded that the district court erred by admitting Gohl’s redacted statement to the police.

Even if the district court had abused its discretion, Gohl would not be entitled to relief because he was not prejudiced. If the district court abuses its discretion in an evidentiary ruling, the appellant must establish that he was prejudiced as a result. *Amos*, 658 N.W.2d at 203. If the error does not implicate a constitutional right, as is the case here, the harmless-error standard controls and the appellant “must prove there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (quotations omitted).

“When conducting harmless-error review, we examine the entire record, and cannot focus only on the evidence of guilt.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation and citation omitted). We consider a non-exclusive list of factors “to determine whether a reasonable possibility exists that the erroneously admitted evidence significantly affected the jury’s verdict.” *Id.* These are: “(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). Additionally, “strong evidence of guilt undermines the persuasive value of wrongly admitted evidence.” *Id.* (quotation omitted).

The analysis is a fact-specific determination, “and not all the factors are relevant or persuasive in every case.” *Id.* at 54-55.

Gohl argues that the recording was “particularly persuasive of [his] intent because it [mis]portrayed Gohl as being sexually excitable by children, thereby giving the jury an improper reason to doubt Gohl’s alternative explanation for his conduct.” Gohl also argues that the state’s “other evidence of Gohl’s intent was not ‘overwhelming’ but largely dependent on whether the jury credited Gohl’s or [the victim’s] version of how his shorts and boxers got pulled down.”

Gohl testified at trial that he did not intend to become naked in front of the victim or to engage in sexual conduct with the victim. Instead, Gohl testified that he was trying “[t]o show [the victim] that she had to be stronger to fight her way out of situations” and that he only became naked from the waist down because the victim’s younger sister accidentally pulled his shorts down. The state characterizes that explanation as “borderline preposterous.” The jury clearly rejected Gohl’s non-sexual explanation for his behavior, and we defer to that reasonable determination. *See State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002) (stating that we generally defer to the fact-finder’s credibility determination).

Gohl also argues that “he could not fully explain the context of his ‘triggered’ remark because doing so would have exposed the jury to evidence of his prior sex offense.” But Gohl did counter the evidence in his trial testimony. When discussing his statement at trial, Gohl testified, “I have no attraction to children. I couldn’t get an erection to a child, because I have no attraction to children.” Gohl further testified that he told the victim not

to sit on his lap “[b]ecause people make assumptions.” Accordingly, although Gohl did not explain the historical context of his “triggered” remark, Gohl was able to counter the persuasive value of the evidence by denying that he was sexually attracted to children.

For its part, the state argues that the prosecution did not mention the statement in its opening remarks or discuss the statement in its closing argument. The state also argues that it offered persuasive evidence of Gohl’s guilt at trial. The victim testified that Gohl removed his pants and repeatedly told her to “suck it.” The forensic investigator who interviewed the victim testified, and the video of that interview was played for the jury. During the forensic interview, the victim told the investigator that her uncle almost raped her when he followed her into the bathroom, pulled down his pants, and told her to “suck it.” The victim’s friend testified that the victim told her that her uncle tried to rape her. The victim’s school counselor testified that the victim told her that “when she was in the bathroom he did pull down his pants” and that “he wanted her to suck it.” Finally, the victim’s mother testified that the victim reported to her that Gohl “locked himself in the bathroom with her, pulled down his pants and his boxers,” and “told her to F---ing suck it, and she was scared.”

In sum, the state presented strong evidence of guilt that undermined the persuasive value of any wrongly admitted evidence. *See Bigbear*, 10 N.W.3d at 54 (“strong evidence of guilt undermines the persuasive value of wrongly admitted evidence.”); *see also State v. Bauer*, 512 N.W.2d 112, 116 (Minn. App. 1994) (finding substantial evidence of guilt where the child victim “gave four consistent accounts of the abuse in the course of the police report, investigation, and trial”), *aff’d*, 516 N.W.2d 174 (Minn. 1994). On this

record, Gohl has failed to establish that there is a reasonable possibility that the challenged evidence significantly affected the verdict. Thus, even if the district court had erred by admitting Gohl's redacted statement, a new trial would not be necessary.

III.

Gohl has submitted a pro se appellate brief alleging several errors. When considering pro se arguments, several principles govern our review. Courts have a duty to reasonably accommodate pro se litigants, so long as there is no prejudice to the adverse party. *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987). “Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Finally, “[c]laims in a pro se supplemental brief that are unsupported by either arguments or citation to legal authority are forfeited.” *State v. Montano*, 956 N.W.2d 643, 650 (Minn. 2021) (quotations omitted). “Such arguments will not [be] considered unless prejudicial error is obvious on mere inspection.” *Id.* at 650-51.

We turn to Gohl's pro se arguments with these principles in mind.

Prosecutorial Misconduct

Gohl appears to argue that the state abused its power because it used false evidence and created evidence after the fact. Specifically, Gohl argues that the state misquoted him in its closing arguments. In response to the question on cross-examination, “[w]hy take your pants off?” Gohl responded, “[b]ecause nothing I do makes any sense.” But during closing arguments the prosecutor indicated that Gohl answered, “nothing I say makes

sense.” However, that misstatement is not so egregious as to warrant a new trial. *See State v. Barthman*, 917 N.W.2d 119, 126 (Minn. App. 2018) (concluding that prosecutor’s slight misstatement of victim’s testimony was insufficient to warrant reversal), *aff’d on other grounds*, 938 N.W.2d 257 (Minn. 2020).

Improper Jury Instruction

Gohl argues that the jury was improperly instructed. “[J]ury instructions must fairly and adequately explain the law of the case and not materially misstate the law.” *State v. Peltier*, 874 N.W.2d 792, 797 (Minn. 2016). Under Minn. Stat. § 609.341, subd. 11(a)(i)(ii) (2022), sexual contact is defined as “the intentional touching by the actor of the complainant’s intimate parts” or the “touching by the complainant of the actor’s” intimate parts “effected by a person in a current or recent position of authority, or by coercion” The jury in Gohl’s case was instructed only on the former—that Gohl could be found guilty if he attempted to touch the victim’s intimate parts.

Gohl did not object to the instruction in district court. Unobjected-to claims of improper jury instructions are reviewed for plain error. *State v. Kelley*, 855 N.W.2d 269, 273-74 (Minn. 2014). “Under the plain-error doctrine, the appellant must show that there was (1) an error; (2) that is plain; and (3) the error must affect substantial rights.” *Id.* An incorrect jury instruction affects a defendant’s substantial rights when “there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury verdict.” *Id.* at 283 (quotation omitted).

The state argues that if the jury had been properly instructed “that appellant could be convicted for attempting to have [the victim] touch his penis, there is no reasonable

likelihood that the jury would have acquitted.” Given the facts of this case, we agree that the correct instruction would have made it easier for the jury to find Gohl guilty of attempted second-degree criminal sexual conduct and that, therefore, the instruction did not have a significant effect on the verdict. Gohl therefore is not entitled to relief under the plain-error standard.

Overcharging

Gohl argues that the state maliciously prosecuted him and abused the judicial process. The state’s decision whom to prosecute is not subject to judicial review absent a showing of impermissible grounds such as race, religion, or sex. *State v. Herme*, 298 N.W.2d 454, 455 (Minn. 1980). Gohl sets forth the correct legal standard, but he fails to identify a cognizable impermissible prosecution ground. Instead, Gohl argues that the state’s impermissible motive was to make him a “patterned offender” for the purposes of future civil commitment. Gohl does not cite—and we are not aware of—any authority indicating that is an impermissible prosecution ground. We therefore reject this assertion of error.

Remaining Assertions of Error

Gohl’s remaining assertions of error are forfeited because they are unsupported by either legal arguments or citation to legal authority and because prejudicial error is not obvious on mere inspection.² See *Montano*, 956 N.W.2d at 650-51 (“Claims in a pro se

² We also note that many of Gohl’s assertions of error rely on documents that we cannot consider. The record on appeal consists of “[t]he documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any.” Minn. R. Civ. App. P. 110.01. This court will not consider any factual assertions that are beyond the record. See *Plowman*

supplemental brief that are unsupported by either arguments or citation to legal authority are forfeited” unless “prejudicial error is obvious on mere inspection.” (quotations omitted)). We therefore do not address Gohl’s assertions that there was improper joinder, that the record has been tampered with or altered, that the evidence was insufficient to sustain the jury’s guilty verdicts, and that he received ineffective assistance of counsel.

In sum, Gohl’s pro se appellate brief does not provide a basis for relief.

Affirmed.

v. Copeland, Buhl & Co., 261 N.W.2d 581, 583 (Minn. 1977) (stating that “[i]t is well settled that an appellate court may not base its decision on matters outside the record on appeal”).