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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0189**

State of Minnesota,
Respondent,

vs.

Deanna Lea King,
Appellant.

**Filed February 2, 2026
Affirmed
Wheelock, Judge**

Wilkin County District Court
File No. 84-CR-24-91

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

Taylor Kerkela, Interim Wilkin County Attorney, Breckenridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

In this appeal from a final judgment of conviction and sentence for threats of violence, appellant argues that (1) the prosecutor committed reversible misconduct by confronting her with inadmissible evidence during cross-examination and relying on that

evidence during closing arguments, (2) the district court committed reversible error by admitting inadmissible lay-opinion testimony into evidence, and (3) the cumulative effect of these trial errors deprived appellant of a fair trial. We affirm.

FACTS

In March 2024, respondent State of Minnesota charged appellant Deanna Lea King with making threats of violence in violation of Minn. Stat. § 609.713, subd. 2 (2022).

At about 7:00 p.m. on March 2, 2024, Wilkin County police dispatch received a call from an unknown caller who said, “Hi, I just overheard some people talking about a bomb and guns, a bomb at Grumpy’s Bar and Grill.¹ A bomb is at the bar.” The caller quickly hung up the phone and did not leave a name or number with the operator. Officers arrived at the bar shortly thereafter to secure the area.

When they arrived, officers saw patrons entering and exiting the bar and observed that no one appeared to be in distress. Once inside, officers also found no signs of fear, emergency, or panic. One of the officers, C.B., spoke with the bartender, who said that everything was normal that night. As Officer C.B. was leaving the bar, A.K. approached him and said she thought she knew who made the phone call. A.K. and King had been friends for many years, and after listening to a recording of the call, A.K. identified King as the caller.

Officer C.B. contacted King the next day and met her at the law-enforcement center. When Officer C.B. played the call recording for King, King stated that she did not

¹ Grumpy’s Bar is owned by M.K., who had a personal connection to King. We refer to it as “M.K.’s bar” throughout the opinion.

remember making the phone call but admitted that it was her voice on the recording. During the interview, King repeatedly denied that she had any memory of making the phone call. Although she initially said that she did not hear there were guns or bombs at M.K.'s bar, she later said that she hears "stuff all the time about the bar." At that point, Officer C.B. stated, "I can tell you what it looks like to me. You were mad at [M.K.], right, you've had a lot of issues, he had a big event, and you didn't want people there." King responded, "That's what it looks li- [audio cuts out]." King then stated again that she heard stuff about the bar "all the time" and that it should be "shut down" because "they're drug lords, sex trafficking, . . . they sell drugs in and out of there. You hear people say stuff about that place all the time. So yes, [she has] heard things like that before."

King reiterated throughout the interview that, in the recording of the phone call to dispatch, she had said that she "heard" people talking about a bomb at the bar. Based on this, she asserted that she did not directly threaten the bar. King's additional statements during the interview with Officer C.B. include the following:

- I have no recollection of it And it says, "I heard."
- That's my voice [inaudible] that's my voice. Now what? . . . I mean no harm, I have no bombs, I'm no threat. I will stay away from there.
- The beginning of it, it says I just heard some people talking. That's what I said. I just heard some people talking about a bomb there, so I dunno. But I'm not threatening anybody, and I wasn't, I never have and I never will, okay I wouldn't hurt a fly.
- I just heard someone say, I just heard people talking that there's a bomb at the bar. Maybe I was trying to warn 'em. Like, like help someone.

After the interview ended, officers arrested and charged King with making threats of violence. As part of King's conditional release, she was ordered to not enter M.K.'s bar or have any contact with M.K.

King's jury trial was in August 2024. Prior to the start of trial, King's counsel objected to the admission of exhibit 4, which was a portion of the audio recording of Officer C.B.'s interview with King that included the officer's statements, "I can tell you what it looks like to me. You were mad at [M.K.], right, you've had a lot of issues, he had a big event, and you didn't want people there." King's counsel argued that the recording should not be admitted because Officer C.B. was giving his opinion or speculating as to why King would have made the phone call. The prosecutor argued that the comment was not speculation because Officer C.B. was laying out the facts for King after interviewing her for 45 minutes and asking if she agreed or disagreed with that impression of the events. King's counsel pointed out that King's response to Officer C.B.'s impression was cut off in the recording. The district court ruled that the evidence was admissible, stating that King would have the opportunity to cross-examine Officer C.B. about the statements he made during the interview.

During opening statements, the prosecutor asserted that King had a prior romantic relationship with M.K., she resented him, and she owed him money. The prosecutor also said that King made the phone call to officers that night to "cause pain or to try and cause fear" in the patrons of M.K.'s bar and law enforcement. During King's opening statement,

her counsel agreed that King had made the call but asserted that it was made out of genuine concern and not to threaten the bar.

A.K., King's longtime friend, testified that she identified King's voice in the recording of the call on the night the call was made. A.K. explained that she and King had been close friends for about eighteen years and that King dated M.K. for about a year and a half. She testified that King and M.K.'s relationship had been rocky for about a month before the call occurred. The prosecutor played the recording of the call for the jury, and A.K. again identified the voice as King's. A.K. also testified that King had been at M.K.'s bar earlier on the day of the phone call.

Officer C.B. also testified about the call and police protocol for dealing with a bomb threat, including requesting assistance from other law-enforcement departments, notifying law-enforcement supervisors, creating a perimeter around the premises upon arrival, and entering the premises with long rifles. Officer C.B. noted that, when he arrived on the scene at the bar, it "didn't seem like anyone was . . . frantic" and that seeing people standing calmly outside the building "was kind of a red flag of maybe the—what the call [law enforcement] got dispatched to isn't exactly what it appeared it was going to be." Officer C.B. stated that, when he questioned patrons outside the bar, no one said that they had seen anything suspicious or any evidence of weapons or bombs inside the bar.

Officer C.B. testified that, while he was at the bar, he played the recording of the call for A.K., who identified the caller as King. The prosecutor then asked Officer C.B. what his impression of the call was when he first heard the recording of it. King's counsel objected, arguing that the question called for speculation. The prosecutor responded that

Officer C.B. was merely giving his own impression, and the district court overruled the objection. Officer C.B. then testified:

My impression is it did seem a little odd. It doesn't—it didn't to me appear as if someone was truly concerned for people's safety, or that's how they would have reported what was going on. It's—like I said, it just seemed odd. It—it seemed like there was still more pieces of the puzzle to discover.

Officer C.B. then testified about his interview of King the day after the call, stating that King told him she had dated M.K. for about a year and a half and that they separated at the end of February. King had also said that she owed M.K. some money but did not specify the amount.

The prosecutor offered exhibit 4—which contained portions of the audio recording of Officer C.B.'s interview of King—into evidence, and King's counsel again objected to its admission, arguing that Officer C.B.'s comments about King's motive and "his thoughts or his theory . . . without any foundation" is speculation. The district court overruled the objection, and the prosecutor published exhibit 4 to the jury. The audio recording played for the jury included the following exchange between Officer C.B. and King:

OFFICER C.B.: So, why would you make that phone call?

KING: Well, why would I?

OFFICER C.B.: Well, I can tell you what it looks like to me.

KING: Okay then.

OFFICER C.B.: [M.K.], right, you a lot of issues. He had a big event, and you didn't want people there.

KING: "That's what it looks like." (End of recording.)²

² This is how the recording was transcribed in the trial transcript; however, King's counsel asserted before trial, during their objection to the exhibit being entered as evidence, that King's response to Officer C.B. at the end of this exchange was not fully audible because the audio recording was cut off. We note that, as the exhibit admitted at trial is the evidence

The prosecutor also entered into evidence the portion of the interview in which King stated that she had never had memory gaps before, that the bar should be shut down because of drugs and trafficking, and that she cares about M.K. even if they are not together anymore.

An audio clip from a different part of the interview was also entered into evidence as exhibit 7. At the end of that recording, King says, “I know you don’t do that sh-t.” The prosecutor asked Officer C.B. what he thought King was referring to when she made that statement during the interview. Officer C.B. responded, “I think she was referring to herself about, like, trying to tell herself that she wouldn’t have done something like that, is kind of how I inferred that at that moment.”

Officer C.B. then testified that, once officers gained access to King’s phone, there was only one number in the call log and the rest had been deleted. King told officers this was a regular practice of hers because she has grandchildren who look at her phone and she does not want them to see the “mean text messages” she sometimes receives.

On cross-examination, King’s counsel asked Officer C.B. about King’s statement, “I know you don’t do that sh-t.”

KING’S COUNSEL: Okay. Now you said that you thought she was telling herself that?

OFFICER C.B.: That’s what it sounded like to me, yeah.

KING’S COUNSEL: Wasn’t it just a direct response to your question?

OFFICER C.B.: That’s not, I guess, how I portrayed that at all.

that was presented to the jury, King can be heard stating, “That’s what it looks li-” before the recording ends.

King's counsel then inquired about Officer C.B.'s comments in exhibit 4 when he told King his impression of her motive for making the call.

KING'S COUNSEL: You're asking her about why she would do this or not; right?

OFFICER C.B.: I remember I recall asking her that, yes.

KING'S COUNSEL: And then you—you speculated on what you thought the reasoning was; right?

OFFICER C.B.: That is correct.

KING'S COUNSEL: And did she then agree with you?

OFFICER C.B.: No, she did not.

King testified in her defense, explaining that she made the call because, a few days before March 2, when she was doing the bar's laundry at a laundromat in North Dakota, she was experiencing some medical issues that included brain fog, dizziness, seizures, and a urinary-tract infection. While waiting for the laundry, King walked across the street to a local establishment to have a cigarette and visit people she knew standing outside. King testified that, during her interview with Officer C.B., she told him that she did not remember making the call because at that time she was "still under the—feelings of [her] sickness," but that now she remembers she heard someone that day in North Dakota talking about guns and bombs at M.K.'s bar.

King testified that she heard people "talking smack about, you know, there's going to be bombs, guns, and that place needs to go down." King testified that she told M.K. later that day about what she heard, but he responded, "Ah, I'm used to it." King said she got sicker and sicker that weekend and still did not remember making the call. When asked why she made the call, King testified:

I made the phone calls because I could not get ahold of [M.K.], and there was a big event that Saturday, I believe it was, the

second. And every event that we have had at that bar, there's been things happen, especially with myself. And I have heard several things in the community over the last year and a half, and I was truly concerned.

King said that she did not want to harm M.K. and still loved him, even though they had ended their relationship just before the incident occurred. When asked about their current relationship, King stated that she hoped in the future they would be friends but that, "[r]ight now, there's a no contact order . . . because of this."

On cross-examination, King said she did not know who was talking about bombs and guns near the laundromat, she did not immediately call law enforcement after hearing the threats, and she did not mention these threats to Officer C.B. during their hour-long interview. The following exchange occurred:

PROSECUTOR. Now, isn't it true that on that day, [M.K.] actually told you to leave the bar?

KING'S COUNSEL: Objection.

KING: No, Your Honor, that's not true.

KING'S COUNSEL: Objection.

THE COURT: What grounds?

KING'S COUNSEL: It's hearsay, that he couldn't get it in any other way, so he's trying to get it in this way.

THE COURT: Overruled.

PROSECUTOR: You say no, he didn't kick you out on March 2?

KING: [M.K.] has never kicked me out of the bar.

PROSECUTOR: Okay.

The prosecutor then asked about the order to which she had referred earlier that day as a “no contact order.”³

PROSECUTOR: He’s never kicked you off the bar. You do have a no-contact order in place with him now; correct?

KING: Yes.

PROSECUTOR: So you’re not allowed to go to [M.K.’s bar]. Is that a fair statement?

KING: Yes. Ordered by the judge.

PROSECUTOR: Ordered by the judge, yep; but requested by [M.K.] Correct?

KING: No.

PROSECUTOR: Not requested by him?

KING: Not requested by me; not requested by [M.K.], to my knowledge.

King’s counsel did not object.

During closing arguments, the prosecutor asserted that King intended to cause fear or acted with reckless disregard for causing such terror when she made the call. The prosecutor asserted that King knew there were no bombs at M.K.’s bar and that she made the call because she was upset with M.K.

[W]e heard it from M.K. that in fact even though today the— the defendant says she was never in [M.K.’s bar] on March 2, that she actually was. And what happened on March 2? The relationship finally was caput, that she was not allowed to go there anymore. That’s what happened on March 2. That’s what happened. Again, that’s what we heard today. That’s the actual story here.

King’s counsel did not object.

³ The reference to a no-contact order is to a term of King’s conditional-release order requiring that she not have contact with M.K. or M.K.’s bar, as King mentioned in her testimony on direct examination.

During King's closing argument, her counsel asserted that King made the call because she was concerned for the bar and its inhabitants after what she heard the day she was at the laundromat. King's counsel addressed Officer C.B.'s statement about King's motive, pointing out that it was based on the state of King's relationship with M.K. and that the state did not call M.K. as a witness.

The jury found King guilty of threats of violence. At the sentencing hearing, the district court stayed execution of a 12-month prison sentence, placing King on probation for three years and imposing fifteen days of jail time.

King appeals.

DECISION

King argues that (1) the prosecutor committed reversible misconduct by confronting her with inadmissible evidence during cross-examination and relying on that evidence during closing arguments, (2) the district court committed reversible error by admitting inadmissible lay-opinion testimony into evidence, and (3) the cumulative effect of these trial errors deprived her of a fair trial. We address each argument in turn.

I. The prosecutor did not commit reversible misconduct.

King argues that the prosecutor committed reversible misconduct during his cross-examination of King because he elicited inadmissible evidence by asking her if M.K. kicked her out of M.K.'s bar and if there was a no-contact order in place and then he relied upon that inadmissible evidence during his closing argument. At trial, King objected to the prosecutor asking if King was kicked out of M.K.'s bar and was overruled by the district

court. But King did not object to the prosecutor asking about the no-contact order or to the state's closing argument. We address each statement King challenges.

A. The prosecutor did not commit misconduct when he asked King about being kicked out of M.K.'s bar and the no-contact order.

The standard of review for prosecutorial misconduct depends on whether the alleged misconduct was objected to on the record. Allegations of unobjected-to prosecutorial misconduct are reviewed under a modified plain-error test, *see State v. Ramey*, 721 N.W.2d 294, 299 (Minn. 2006), while any objected-to prosecutorial misconduct is reviewed for harmless error, *State v. Wren*, 738 N.W.2d 378, 389 (Minn. 2007). The standard for determining whether an error was harmless is based upon the severity of the misconduct: in cases of "serious" prosecutorial misconduct, appellate courts require a "certainty beyond a reasonable doubt that the misconduct was harmless before affirming"; and in cases of less serious misconduct, appellate courts consider "whether the misconduct likely played a substantial part in influencing the jury to convict." *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974).

King argues that the prosecutor committed misconduct by "improperly cross-examining King with inadmissible evidence." King asserts that, because the prosecutor did not offer any evidence to support the proposition that M.K. had kicked King out of the bar the day she made the call, the question, "Now isn't it true that on that day, [M.K.] actually told you to leave the bar?" was prosecutorial misconduct. The state, however, asserts that the prosecutor's conduct was not improper because the testimony the question sought to elicit was "clearly admissible" and probative of King's state of mind.

The state argues that, due to conflicting testimony between A.K. and King as to whether King was at the bar on March 2,⁴ “[t]he inquiry into this discrepancy was not inappropriate.” We agree with the state.

“A prosecutor does not commit misconduct by complying with the district court’s rulings.” *State v. Carroll*, 639 N.W.2d 623, 629 (Minn. App. 2002), *rev. denied* (Minn. May 15, 2002). Here, the district court overruled King’s objection during trial and allowed the prosecutor to continue with his line of questioning; the prosecutor therefore complied with the ruling.

King cites two cases to support her argument: *State v. Pendleton*, 706 N.W.2d 500 (Minn. 2005), and *State v. Griffin*, 887 N.W.2d 257 (Minn. 2016). In *Pendleton*, the appellant was found guilty of first-degree premeditated murder for shooting and killing the victim from a car. 706 N.W.2d at 503-04. The driver and another passenger of the car were charged with aiding and abetting murder in the second degree after being present for and witnessing the fatal shooting. *Id.* at 504. During trial, the appellant testified that he was not at the scene of the shooting when the offense occurred. *Id.* at 509. The prosecutor then asked why the other passenger said, during a jail recorded conversation, that the appellant had been present at the shooting. *Id.* The district court sustained the appellant’s objection to this question, did not allow it to be answered, and instructed the jury to disregard the question. *Id.* The reviewing court determined that the question was improper

⁴ A.K. testified that King had been at the bar during the day on March 2, but King testified that she had not been present at the bar at all that day, in direct conflict with A.K.’s testimony.

because it “impermissibly interjected the inadmissible hearsay statement” made by the other passenger into the trial when he did not otherwise testify at trial. *Id.* However, the reviewing court also determined that the misconduct did not impair the appellant’s right to a fair trial because of the district court’s ruling and instructions and therefore that a new trial was not warranted. *Id.*

In *Griffin*, the appellant claimed the district court committed reversible error when it denied his motion for a mistrial based on improper questioning by the prosecutor. 887 N.W.2d at 262. Though the appellant challenged a question posed by the prosecutor, the reviewing court did not analyze whether the question was improper but instead deferred to the discretion of the district court in remedying the prosecutor’s conduct. *Id.* at 263. The supreme court in *Griffin* noted that the district court sustained the objection to the question at trial and that, because of the “strongly worded curative instruction, the presumption that juries follow the district court’s instructions, and the DNA evidence suggesting Griffin’s guilt,” there was no “reasonable probability” that the question affected the outcome of the trial. *Id.* The supreme court in *Griffin* also recognized that “[t]he trial judge is in the best position to determine whether an error is sufficiently prejudicial to require a mistrial or whether another remedy is appropriate.” *Id.* at 262. Though King cites *Griffin* to support her claim of prosecutorial misconduct, the supreme court in *Griffin* did not analyze the prosecutor’s conduct under—or even mention—the harmless- or plain-error standard of review, and therefore, *Griffin* does not apply to the issues presented here.

Unlike in *Griffin* and *Pendleton*, the prosecutor here was not interjecting inadmissible hearsay by asking King if she was told to leave the bar on March 2.⁵ The question posed by the prosecutor was not offered for the truth of the matter asserted—whether King was actually kicked out of the bar that day—but to highlight the discrepancy between King’s and A.K.’s testimonies. The question was also relevant to King’s state of mind. *See* Minn. R. Evid. 402 (stating that “[a]ll relevant evidence is admissible” unless an exception applies). Pursuant to Minnesota Rule of Evidence 611(b), “an accused who testifies in a criminal case may be cross-examined on any matter relevant to any issue in the case, including credibility.” The question posed by the prosecutor was relevant to the issues of King’s motive and her credibility. And after King told the prosecutor that she had never been kicked out of M.K.’s bar, the prosecutor moved on to the next question.

“Prosecutorial misconduct is harmless beyond a reasonable doubt if the jury’s verdict was ‘surely unattributable’ to the misconduct.” *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (quoting *State v. Nissalke*, 801 N.W.2d 82, 106 (Minn. 2011)). “Factors relevant to the determination of whether prosecutorial misconduct is harmless beyond a reasonable doubt include how the improper evidence was presented, whether the State emphasized it, whether it was highly persuasive, and whether the defendant countered it.” *Id.* (citing *Wren*, 738 N.W.2d at 394). “The strength of the other evidence supporting the verdict is also a factor in the analysis, but it is not dispositive.” *Id.*

⁵ “‘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 not admissible unless an exception applies. Minn. R. Evid. 802.

Even if the prosecutor's question was misconduct, there is no reasonable doubt that it was harmless. The prosecutor did not spend much time on this question—of 300 pages of trial transcript, the entire challenged exchange only took up 15 lines—and King repeatedly countered the prosecutor's question by asserting that she was not kicked out of the bar on March 2.

B. The prosecutor did not commit reversible misconduct by asking King a question about the conditional-release order that King referenced during her direct examination.

Appellate courts apply “the plain error doctrine when examining unobjected-to prosecutorial misconduct.” *Ramey*, 721 N.W.2d at 299. “In order to meet the plain error standard, a criminal defendant must show that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights.” *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). “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) (quotation omitted). “Under [a modified plain error analysis], the defendant must establish the existence of an error that was plain, and then the burden shifts to the State to establish that the plain error *did not* affect the defendant's substantial rights.” *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021). To meet its burden, the state must show “that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Ramey*, 721 N.W.2d at 302 (quotation omitted).

King next argues that the unobjected-to question from the prosecutor about the no-contact order constituted reversible prosecutorial misconduct. King asserts that the

prosecutor was attempting to insert inadmissible evidence by asking if M.K. had a no-contact order against King during cross-examination and that it planted a “prejudicial belief” in the minds of the jury.

“It is improper for a prosecutor to ask questions that are calculated to elicit or insinuate an inadmissible and highly prejudicial answer.” *State v. Brown*, 739 N.W.2d 716, 723 (Minn. 2007) (quotation omitted) (holding the prosecutor committed misconduct when asking a question that elicited evidence when there was an understanding that said evidence would not be placed at issue); *see also State v. Mahkuk*, 736 N.W.2d 675, 689 (Minn. 2007) (holding that a prosecutor committed misconduct by eliciting a response from a testifying officer about firearms when the district court had limited the scope of the officer’s testimony, prohibiting him from mentioning guns). However, here King has not sufficiently established that the prosecutor’s question constituted plain error. The district court did not limit the scope of testimony or prohibit the state from asking about the conditional-release order, nor did King’s counsel object to the state’s questioning, and it involved a topic that King initially brought up during her direct examination. *See State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001) (holding that the district court’s failure to intercede was not plain error where the witness’s testimony “was an ambiguous description of what may or may not have been a separate *Spreigl*⁶ incident and where no objection was made to that testimony”).

⁶ “*Spreigl* evidence” refers to evidence of another act that is not part of the conduct for which the defendant is charged and cannot be used to prove the defendant’s action in conformity with character but may be admitted for limited purposes, such as to prove

In addition, the prosecutor’s conduct was aligned with the Minnesota Rules of Evidence regarding the proper scope of cross-examination. *See* Minn. R. Evid. 611(b); *Webster*, 894 N.W.2d at 787. “An accused who testifies in a criminal case may be cross-examined on any matter relevant to any issue in the case, including credibility.” Minn. R. Evid. 611(b); *see also* Minn. R. Evid. 611(b) 1977 comm. cmt. (“The rule makes it clear that the scope of cross-examination of an accused who takes the witness stand in a criminal trial is limited only by principles of relevancy and the Fifth Amendment.”). We conclude that, even if the question was error, it was not a clear or obvious error and therefore does not satisfy the second prong of the plain-error test. *See Griller*, 583 N.W.2d at 740; *see also Webster*, 894 N.W.2d at 787. Even if we were to reach the third prong of the analysis, we would conclude that the state met its burden of establishing that the prosecutor’s conduct did not affect King’s substantial rights. An error is less likely to be prejudicial where the evidence of guilt is strong. *See, e.g., State v. Peltier*, 874 N.W.2d 792, 805-06 (Minn. 2016) (considering the strength of the evidence, the pervasiveness of the misconduct, and whether the defendant had the opportunity to rebut the improper remarks). Here, the parties’ disagreement was about whether King called in the bomb threat as a sincere act of concern, and the state presented overwhelming evidence of King’s guilt at trial.

That evidence included A.K.’s testimony that King had a rocky relationship with M.K. and had been at M.K.’s bar on the day of the call. The jury heard audio recordings

intent, motive, or absence of mistake. *See* Minn. R. Evid. 404(b); *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965).

of the interview with Officer C.B. in which King acknowledged that it was her voice on the recording but denied making the phone call, could not give any specific details about when she had heard in the past about bombs and guns at M.K.'s bar, and denied a history of memory gaps. The jury also heard King's testimony that the memory of hearing people talk about bombs and guns at M.K.'s bar when she was doing laundry came back to her after her interview with Officer C.B. but before trial and that she did not report the information right away because M.K. "doesn't like it when somebody calls the police." Finally, the jury listened to the call, in which King hung up without speaking to anyone and did not leave a name or number. The district court provided instructions to the jury explaining that the attorneys' questions are not evidence. Given the strength of the evidence here and the jury instructions, we conclude the state has met its burden of establishing that any error did not impact King's substantial rights.

C. The prosecutor likely committed plain error during closing argument, but it did not affect King's substantial rights.

King also argues that the prosecutor committed misconduct by misrepresenting the evidence in his closing argument. Because King did not object to the state's closing argument at trial, we review her challenge under the plain-error doctrine set forth above. *See Ramey*, 721 N.W.2d at 299.

"A proper closing argument should focus on the evidence and reasonable inferences drawn from the evidence." *State v. Yang*, 627 N.W.2d 666, 679 (Minn. App. 2001), *rev. denied* (Minn. July 24, 2001). And the state "may not make arguments that are not supported by evidence." *State v. Bobo*, 770 N.W.2d 129, 142 (Minn. 2009). Here, the

prosecutor inferred during the state’s closing argument that King was kicked out of M.K.’s bar on March 2 and not allowed to return. No one testified that King was kicked out of M.K.’s bar on March 2, and though she admitted she was not allowed to have contact with M.K. or M.K.’s bar based on an order after the state filed a complaint against her, there was no evidentiary inference that King was kicked out that night and not allowed to return. Because the state made an argument that was not supported by evidence, we agree there was plain-error misconduct.

Upon a determination of plain error, the burden shifts to the state to show “that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Ramey*, 721 N.W.2d at 302. To determine whether such a reasonable likelihood exists, “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.” *State v. Portillo*, 998 N.W.2d 242, 251 (Minn. 2023) (quotation omitted).

King’s intent in making the call was the primary issue at trial. Throughout the trial and during closing argument, King focused on rebutting the state’s assertion that she made the call knowing there was no actual threat. Based on the verdict, the jury, after weighing the evidence presented, was not persuaded by King’s arguments. And, as discussed above, the evidence of King’s guilt was overwhelming. The impact of the error was also lessened by the district court’s jury instructions. The district court instructed the jury that “[n]othing the attorneys say during the trial, including opening statements and closing arguments, is evidence.” *See State v. Washington*, 521 N.W.2d 35, 40 (Minn. 1994) (concluding that a

prosecutor's improper statements during closing argument did not warrant reversal in part because the district court instructed the jury that attorney arguments were not evidence).

King was also able to counter any incorrect assertions by the prosecutor during her closing argument. We therefore conclude that, although the prosecutor's characterization of the evidence during closing arguments constituted plain error, it did not affect King's substantial rights.

II. The district court did not abuse its discretion by admitting lay-opinion evidence during trial.

King next argues that the district court abused its discretion when admitting three pieces of evidence through Officer C.B.'s testimony at trial: (1) his response during direct examination when asked for his initial impression of King's phone call, (2) exhibit 4, in which he asked about King's motive, and (3) his interpretation of King's comment, "I know you don't do that sh-t." King asserts that each of these instances was speculation that was "unhelpful, and therefore inadmissible, opinion testimony."

"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). When challenging the admission of evidence, an appellant bears the burden to prove that there was an abuse of discretion and that they were prejudiced by it. *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009). When evidence is improperly admitted, a reviewing court will

reverse only when there is a “reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation omitted). When determining if a reasonable possibility exists, 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.” *Id.* And “overwhelming evidence of guilt is a factor, often a very important one,” because “[s]trong evidence of guilt undermines the persuasive value of wrongly admitted evidence.” *Id.* at 59 (quotations omitted).

Lay opinions that are rationally based on a witness’s perceptions are admissible if they are helpful to a jury. *State v. Washington*, 725 N.W.2d 125, 137 (Minn. App. 2006), *rev. denied* (Minn. Mar. 20, 2007). Pursuant to Minnesota Rule of Evidence 701,

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

King asserts that all of Officer C.B.’s challenged testimony “embraced the ultimate issue of King’s guilt” and was not “based on his perception nor helpful to the jury,” and thus it invaded the province of the jury, rendering it inadmissible. However, Minnesota Rule of Evidence 704 provides that “[t]estimony in the form of an opinion or inference

otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” The commentary to the rule explains:

Expert and lay witnesses will not be precluded from giving an opinion merely because the opinion embraces an ultimate fact issue to be determined by the jury. . . . In determining whether or not an opinion would be helpful or of assistance under these rules a distinction should be made between opinions as to factual matters, and opinions involving a legal analysis or mixed questions of law and fact. Opinions of the latter nature are not deemed to be of any use to the trier of fact.

Minn. R. Evid. 704 1977 comm. cmt; *see also State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990) (holding that an officer’s opinion testimony that the defendant killed the victim was admissible because it was “factual rather than legal”).

Officer C.B.’s testimony throughout trial did not contain any legal analysis or a mixture of law and fact. His testimony was based on his own perceptions, was helpful to determine a fact in issue at trial—King’s intent in making the phone call—and was based on his personal opinion, not scientific, technical, or other specialized knowledge.

As to King’s challenges to the testimony regarding Officer C.B.’s initial impression that the call was odd, the district court acted within its discretion in overruling King’s objection. As the state asserts, Officer C.B.’s impression that the call was odd explained law enforcement’s continued investigation into the call and how it conducted that investigation. Because Officer C.B.’s interpretation was helpful to the jury’s understanding of the investigation, was rationally based on his perception, and did not include a legal analysis, the district court did not abuse its discretion in admitting it.

As to King's challenge to the admission of exhibit 4 before trial began, the district court acted within its discretion in overruling King's objection because King was able to cross-examine Officer C.B. Officer C.B.'s comment to King during their interview was based on his personal opinion of King's true motive for making the phone call. This testimony was "based on his rational perceptions and helped the jury to make a determination of the facts in issue." *State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010) (holding that there was no error when the district court admitted a deputy's testimony that he formed an opinion at the crime scene that the victim had been assaulted). Because Officer C.B.'s interpretation was helpful to the jury's understanding of King's potential motive, was rationally based on his perception, and did not include a legal analysis, the district court did not abuse its discretion in admitting exhibit 4.

As to King's challenge to Officer C.B.'s testimony about his interpretation of King's statement, "I know you don't do that sh-t," the district court may have abused its discretion. Though Officer C.B.'s interpretation was based on his own perception and did not include a legal analysis, it was not necessarily "helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." Minn. R. Evid. 701. Officer C.B.'s comment did not help the jury to determine the ultimate issue, which was King's intent in making the phone call. *See Dahlbeck v. DICO Co.*, 355 N.W.2d 157, 165-66 (Minn. App. 1984) (holding that the district court properly excluded lay-opinion testimony because the opinion was speculative and would only interpret photographs, which the jury was capable of doing), *rev. denied* (Minn. Feb. 6, 1985). Thus, the district court likely abused its discretion by admitting this portion of Officer C.B.'s testimony.

However, that abuse of discretion does not warrant a reversal, because Officer C.B.'s interpretation did not prejudice King. This portion of the testimony did not involve any legal analysis, was not asserted as conclusive evidence, and was based on Officer C.B.'s perception. Moreover, the effect on the jury was likely minimized during King's cross-examination of Officer C.B. King was able to present a defense and rebuttal through cross-examination of Officer C.B., minimizing any prejudicial effect Officer C.B.'s interpretation may have had. And, as set forth above, the evidence against King on the disputed issue of her motive in placing the call was overwhelming. Therefore, any abuse of discretion in admitting Officer C.B.'s testimony as lay-opinion evidence did not prejudice King. And King is not entitled to a new trial because there is no reasonable possibility that the admission of the officer's testimony significantly affected the verdict.

III. King is not entitled to a new trial based on her claim as to the cumulative effect of alleged trial errors.

We turn finally to King's argument that the cumulative effect of the errors at trial entitle her to a new trial. According to King, given the number of serious and prejudicial errors in this case, a new trial is warranted.

We have held, in rare cases, that the cumulative effect of trial errors can deprive an appellant of their constitutional right to a fair trial when the "errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the [appellant's] prejudice by producing a biased jury." *State v. Hill*, 801 N.W.2d 646, 659 (Minn. 2011) (quotations omitted).

As there were limited errors that ultimately did not affect the jury's verdict here, reversal on the basis of the cumulative effect of trial errors is not warranted. Because the district court's errors, weighed together, were not "enough to tip the scales" toward producing a biased jury, we decline King's request for a new trial based on the alleged errors' cumulative effect. *Id.* (quotations omitted).

Affirmed.