

*This opinion is nonprecedential except as provided by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
A25-1247**

State of Minnesota,
Respondent,

vs.

Joseph Dean Potter,
Appellant.

**Filed July 13, 2026
Affirmed
Larson, Judge**

St. Louis County District Court
File No. 69VI-CR-23-644

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

Kimberly J. Maki, St. Louis County Attorney, Chris Florey, Assistant County Attorney,
Virginia, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Harris, Judge; and Halbrooks,
Judge.*

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Joseph Dean Potter challenges his stalking conviction on the basis that the district court plainly erred when it allowed a police officer to testify that she suspected Potter had sent certain text messages. Because the district court did not plainly err, we affirm.

FACTS

Respondent State of Minnesota charged Potter in an amended complaint with stalking under Minn. Stat. § 609.749, subd. 5(a) (2020) (count I); violation of an order for protection (OFP) under Minn. Stat. § 518B.01, subd. 14(a) (2022) (count II); and harassment, second or subsequent violation, under Minn. Stat. § 609.749, subd. 4(a) (2022) (count III). The following facts were elicited at a jury trial.

Potter and S.D. (victim) maintained a romantic relationship for about 20 years. On multiple occasions during the relationship, victim attempted to leave Potter. In 2017, after victim left Potter, Potter continued to send text messages that were often threatening and demeaning. For example:

Ur dead . . . I going hunting for u . . . 50 cal to the head . . . Ur one dirty c-nt wait till I find it fat a-- I know u took it u been up for 3; or 4 days now ur dead c-nt[.]

U get a pay check c-nt and u take my only way to live I really am coming for ur sl-t lying a-- I will walk if I have too ur f-cking dead . . . I guess I walking don't worry I got my strap ready for u . . . Leaving now[.]

Victim reported these text messages to a police officer (the officer). Based on her experience, the officer believed “50 cal” and the “strap” referenced a firearm. In late November 2017, the district court issued an OFP prohibiting Potter from having any contact with victim for two years.

In 2021, while at Potter’s house, victim and Potter got into an argument and Potter “hailed back and [] punched [victim] on the side of [her] face . . . the hardest he had ever hit [her].”

Around March 2023, victim ended the relationship with Potter. At that time, victim obtained another OFP, again prohibiting Potter from contacting victim for two years. Yet, victim continued to receive threatening text messages. Victim forwarded some text messages to the officer. The text messages continued until November 2024. During this time, victim was sent approximately 100 text messages from various phone numbers. Some examples include:

1 two I’m coming for you 34 better lock your door 56 picking up Sticks 78 better not wait 910 doing it again[.]

[Y]ou will see what I have become my true inner soul will be set free you will beg and plea to see the old f-cked up me when you see what I’ve become nothing will stop there because the devil will be set free and be on the hunt for his pray[.]

[Y]our pals were here last night they better try getting me somewhere else because I don’t f-ck around with these guys I’m not going peaceful or nice[.]

I know your stupid a-- is awake at least you admit you guys were just trying to get money out of me I don’t f-cking care take the f-cking money ill get more f-ck you I’m done with the sh-t so if she wants money let me know before I’m paid after

that f-ck it I'm done I f-cking hate you I can't wait to see you
because nothing is gonna f-cking stop me[.]

At trial, victim testified that she believed the text messages came from Potter, in part, because the text messages described incidents only Potter would know—like, Potter's offer to purchase a car for their daughter.¹ The text messages stopped the day police officers located Potter.

The officer testified at trial. The officer noted that, during her investigation, she determined the text messages came from various phone numbers, and despite attempts to connect the messages to Potter, she could not do so. The officer also recounted a conversation she had with victim after victim reported an OFP violation.

Q: And did you speak to [victim]?

A: I did.

Q: And what did you learn from [victim]?

A: Mr. Potter had been messaging her through various modes of communication – through a bunch of different phone numbers or she suspected that it was him and then based on the conversations that she was having with the party, *I suspected that it was Mr. Potter.*

(Emphasis added.)

The jury returned a guilty verdict on all counts. The district court convicted Potter on count I and sentenced him to a 60-month prison term.²

¹ The state also called Potter's sister, who revealed that in June 2023 Potter spent time in the hospital. One of the text messages was dated June 14, 2024, and mentions the sender being in the hospital a year prior.

² The district court did not enter convictions or impose sentences for count II or count III, but the guilty verdicts were retained.

Potter appeals.

DECISION

Potter argues he is entitled to a new trial because the officer improperly testified that she believed Potter sent the text messages to victim. Because Potter did not object at trial, we review this issue for plain error. *See State v. Chavez-Nelson*, 882 N.W.2d 579, 589 (Minn. 2016); *see also* Minn. R. Crim. P. 31.02.

To meet the plain-error standard, Potter must show that “(1) there was an error, (2) the error was plain, and (3) the error affected [Potter’s] substantial rights.” *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). “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). “Plain error affects a defendant’s substantial rights if there is a reasonable likelihood that the error had a significant effect on the jury’s verdict.” *State v. Bustos*, 861 N.W.2d 655, 663 (Minn. 2015) (quotation omitted). If the first three requirements are satisfied, we will not exercise our discretion to grant relief unless the “failure to do so will cause the public to seriously question the fairness and integrity of our judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

Potter contends the district court plainly erred when it allowed the officer to testify that she “suspected” the text messages were sent by “Mr. Potter.” According to Potter, the officer improperly testified to an ultimate issue, violating Minn. R. Evid. 701.

Under rule 701, lay witnesses can provide opinion testimony, but only to opinions “which are (a) rationally based on the perception of the witness; (b) helpful to a clear

understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge" "A lay witness's opinion . . . testimony may help the jury by illustrating the witness's perception in a way that the mere recitation of objective observations cannot." *State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010). Such lay-opinion testimony is not objectionable merely because "it embraces an ultimate issue to be decided by the trier of fact." Minn. R. Evid. 704. Police officers can offer their lay opinion on factual issues so long as they avoid making legal conclusions. *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990).

But a district court should exclude ultimate-issue testimony if it "embraces legal conclusions or terms of art" or "merely tell[s] the jury what result to reach." *State v. Moore*, 699 N.W.2d 733, 740 (Minn. 2005) (quotations omitted). When a jury is improperly exposed to ultimate-issue testimony, it constitutes a plain error. *See State v. Hogetvedt*, 623 N.W.2d 909, 915-16 (Minn. App. 2001), *rev. denied* (Minn. May 29, 2001).

We conclude Potter has not met his burden to show the district court plainly erred when it allowed the officer to testify that she suspected Potter sent the text messages. The officer offered lay-opinion testimony on a factual issue. *See DeWald*, 463 N.W.2d at 744. And, while it embraced the ultimate issue of whether Potter engaged in the behavior that constituted stalking, the officer did not testify that she believed that Potter was guilty or tell the jury to reach a particular result. *See Moore*, 699 N.W.2d at 740.

Potter disagrees, citing *Hogetvedt*, 623 N.W.2d at 911 and *State v. Myrland*, 681 N.W.2d 415 (Minn. App. 2004), *rev. denied* (Minn. Aug. 25, 2004). But both are distinguishable. In *Hogetvedt*, the officer testified that he "believed it was appellant that

assaulted her,” in direct violation of a pretrial order regarding permissible testimony. 623 N.W.2d at 915-16. Unlike *Hogetvedt*, the officer’s testimony here did not violate a pretrial order and avoided legal terms (like “assaulted”) to infer Potter’s guilt. And *Myrland* addressed officer testimony about “a fact that had no bearing on the jury’s decision.” 681 N.W.2d at 421. Unlike *Myrland*, the officer’s testimony here had considerable bearing on the jury’s evaluation of who sent victim the text messages. See, e.g., *State v. Patzold*, 917 N.W.2d 798, 808 (Minn. App. 2018) (affirming admission of officer lay-opinion testimony because the officers testified about facts and evidence revealed by their investigation), *rev. denied* (Minn. Nov. 27, 2018). Thus, neither *Hogetvedt* nor *Myrland* favor Potter’s position.

For these reasons, we conclude the district court did not plainly err when it allowed the officer to testify that she suspected Potter sent the text messages.

Affirmed.