**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A17-1993**
**A17-1995**

State of Minnesota,
Appellant (A17-1993),
Respondent (A17-1995),

vs.

Deandre Martell Weaver,
Respondent (A17-1993),
Appellant (A17-1995).

**Filed December 10, 2018**
**Affirmed in part, reversed in part, and remanded**
**Jesson, Judge**
**Concurring in part, dissenting in part, Worke, Judge**

Olmsted County District Court
File No. 55-CR-15-3612

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Jennifer D. Plante, Senior Assistant County Attorney, Rochester, Minnesota (for respondent State of Minnesota)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant Deandre Martell Weaver)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Jesson, Judge.

## U N P U B L I S H E D  O P I N I O N

**JESSON**, Judge

In these consolidated appeals, Deandre Weaver challenges his conviction of promoting prostitution, arguing that the district court committed reversible error by allowing expert testimony on the subject of the business of prostitution. Meanwhile the state contends that the district court abused its discretion by ordering a downward durational sentencing departure. Because we conclude that the district court did not plainly err by allowing the expert testimony and did not abuse its discretion in sentencing, we affirm Weaver's conviction and sentence. But we remand for the district court to correct the warrant of commitment.

## FACTS

An undercover Rochester police officer exchanged texts with E.M., Weaver's then girlfriend, after viewing an escort-ad page on the internet. The officer was directed to a room in a hotel. Other surveilling officers, after discovering that the room was being rented by Weaver, saw Weaver exit the hotel and talk on his phone. They also saw another male drive up, talk on the phone, enter the hotel without bags, and leave ten minutes later. E.M. exited the hotel and eventually drove away with Weaver in his vehicle; the surveilling officers followed them to another hotel.

Meanwhile, the undercover officer had received a text message stating, "don't do in-call if you don't have the balls for it." He testified that the term "in-call" means that the buyer of sex goes to the person providing sex for money. He went to a different hotel to try to do an "out-call," meaning that the person selling sex would come to him. He called

the escort-ad number using a different undercover phone; when E.M. responded, he met her in a hotel room, and they discussed "getting comfortable."

When the officer said a code word, one of the other officers, who had followed Weaver and E.M. to that hotel, entered the room and placed E.M. under arrest. Weaver was arrested in the parking lot and charged with second-degree promotion of prostitution. *See* Minn. Stat. § 609.322, subd. 1a(2) (2014).

Police recovered cell phones from both Weaver and E.M. E.M.'s phone contained texts from a contact named "Daddy," a term which an officer testified was frequently used to identify a woman's promoter. When that number was called, it rang to Weaver's phone. Weaver's phone also contained photos from the escort website ad, and texts exchanged between the phones including one that stated, "Y'all NEED to wake up and get this money." Weaver's vehicle contained about $1,000 cash and some prepaid VISA gift cards, which two officers testified are used in prostitution because they act as currency and cannot be traced. Two of the gift cards were also found on Weaver's person; when traced, their history revealed payments to the escort website.

Without objection, the state called an expert, Ann Quinn, to testify about the general mechanics of the business of prostitution and sex trafficking in Minnesota. Quinn is a retired agent with the Minnesota Bureau of Criminal Apprehension with expertise in investigating prostitution and sex trafficking cases. She testified that most prostitution is now advertised on the internet on escort websites. Quinn described the process of placing ads, using prepaid Visa cards and phones precharged with funds so the numbers cannot be traced. She testified that the pictures in the ads are often not of the woman being advertised.

She also described additional terminology used, including "donations" or "roses" for money paid, "out-call" referring to a woman going to a customer's location, and "in-call" means that the customer goes to the woman.

According to Quinn, the promoter will help place ads, provide transportation to the dates, and is frequently in a relationship with the woman he promotes, which helps maintain dependency. She testified that almost all of the women have experienced some kind of violence in their backgrounds, and their relationship with their promoters (whom they often call "Daddy") usually involves domestic violence. Quinn testified that although it is possible for a man and a woman to be involved in a joint enterprise, there is always some manipulation, and Quinn had never seen a woman exit prostitution and maintain a relationship with her promoter.

E.M. testified for the defense. She explained that she dated Weaver for a few years after a previous abusive relationship and that her children have a connection with him. She testified that she placed an escort-website ad without discussing it with Weaver. She contended that she met men for massages but did not have sex with them for money and did not share any of the money she received with Weaver. E.M. testified that Weaver never physically or emotionally abused her or made her have sex for money. She stated that when she entered the hotel, she told Weaver she was meeting a girlfriend.

Weaver testified that he took on the role of a substitute father to E.M.'s children. He stated that he and E.M. sometimes shared a phone, and he used prepaid gift cards from E.M. to buy video games. He testified that E.M. did not tell him she was running

escort-website ads, but told him she was meeting a girlfriend in the hotel that evening. He denied that he was making her work as a prostitute.

The jury found Weaver guilty of promoting prostitution. At sentencing, the defense moved for downward dispositional and durational departures, contending that Weaver's crime was less serious than a typical crime of promoting prostitution and that, as Quinn testified, promoters are usually violent towards their prostitutes and manipulate them for money, while Weaver was a loving boyfriend who acted as a caring adult to E.M.'s children. The state argued in opposition that despite E.M.'s and Weaver's relationship, there was always some degree of coercion and manipulation in prostitution.

The sentencing guidelines for Weaver's offense provide for an executed 117-month sentence with a presumptive range of 100-140 months for someone with his criminal-history score of four. *See* Minn. Sent. Guidelines 4.B. The district court declined to depart dispositionally, but issued a downward durational departure, finding that Weaver's offense was significantly less serious than the typical offense. The district court stated that based on the evidence, Weaver's testimony on his lack of involvement was not credible, but

> I'm also convinced that the defendant was not the type of classic, ruthlessly predatory, violent, and exploitative pimp that we do see in these cases, the kind of character for whom a guideline prison sentence of between 100 and 140 months makes . . . sense. One looks at the sentencing guidelines that apply to this offense and others on the same guideline grid, and one notes that one can do various types of fourth-, third-, and second-degree criminal sexual conduct, with four criminal history points, and be looking at a guideline sentence much less than Mr. Weaver is looking at here. In other words, one can do really horrible sexual things to people and still not be

> looking at the guidelines sentence that applies in Mr. Weaver's situation. What that tells me is that in Minnesota what we consider to be the typical offense must be one in which the brutal kind of manipulation and victimization of the prostitute is what we have in mind, a kind of serial sexual assault being committed against her time and time again for the monetary gain of the pimp. That's at least what I see as the typical offense.
>
> Now, I understand what [the prosecutor is] saying, Judge, look at the elements of the offense, doesn't require that. Yeah, I get that, but I'm saying that I think what these guidelines tell me is the typical offense is thought to be that kind of brutal victimization.
>
> . . . .
>
> There's no indication that the defendant was ever violent toward [E.M.] or threatening or intimidating in any manner. He assisted in this enterprise, and that is all he did in this enterprise.

The district court therefore imposed a sentence of 48 months, a greater-than-double downward durational departure.[1] This appeal follows.

## D E C I S I O N

### I. The admission of expert testimony did not constitute plain error affecting substantial rights.

Weaver challenges the district court's admission of expert evidence from Quinn on the subject of prostitution. Because Weaver did not object to this expert testimony at trial, we review its admission for plain error. *See State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010). Under that standard, the defendant has the burden to prove error that is plain and

[1] This offense is classified as a level C offense on the sex-offender grid, and 48 months is the middle of the range of the presumptive sentence length for an offender with no criminal history points. *See* Minn. Sent. Guidelines 4.B (2014).

that affects substantial rights. *Id.*; *see State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "An error is plain if it is clear or obvious," which generally occurs if it contravenes a rule, caselaw, or standard of conduct. *Sontoya*, 788 N.W.2d at 872 (quotation omitted). An error affects substantial rights when there is a reasonable likelihood that it had a significant effect on the jury's verdict. *Griller*, 583 N.W.2d at 741. "To determine whether the error had a significant effect on the jury's verdict, we review the strength of the State's case, the pervasiveness of the error, and whether the defendant had an opportunity to respond to the testimony." *Sontoya*, 788 N.W.2d at 873.

The decision to admit expert testimony rests within the district court's discretion. *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987). A person may be qualified as an expert by education, knowledge, skill, or experience, and expert testimony may be admitted if it helps the jury to understand the evidence or determine a fact at issue. Minn. R. Evid. 702. "The basic requirement of Rule 702 is the helpfulness requirement." *State v. Helterbridle*, 301 N.W.2d 545, 547 (Minn. 1980). Proposed expert testimony does not meet the helpfulness test if its subject lies within the knowledge and experience of lay jurors and it will not add precision or depth to their ability to reach conclusions about the subject within their experience. *Id*. Additionally, a district court may exclude expert testimony if its probative value is substantially outweighed by the danger of misleading the jury, confusing the issues, or creating unfair prejudice to the defendant. *State v. Anderson*, 789 N.W.2d 227, 235 (Minn. 2010) (citing Minn. R. Evid. 403).

Here, the admission of Quinn's testimony did not constitute plain error. The testimony was helpful to the jury because the terminology and details of the business of

promoting prostitution are not subjects within the experience of a lay jury. *See Helterbridle*, 301 N.W.2d at 547. It assisted the jury by adding depth to their understanding of how the business of prostitution is run with the aid of technology and also illuminated the typical relationship between a prostitute and the promoter.

Weaver argues that Quinn's testimony confused the jury by conflating the crimes of sex trafficking and promoting prostitution, two separate offenses. Conviction of promoting prostitution requires that a person, among other acts, "solicits or procures patrons for a prostitute" or "transports an individual from one point . . . to another point . . . to aid the prostitution of the individual." Minn. Stat. §§ 609.321, subd. 7(1), (6), .322, subd. 1a(2) (2014); *see also* Minn. Stat. § 609.321, subd. 9 (2014) (defining prostitution). Sex trafficking, a different offense, is "receiving, recruiting, harboring, providing, or obtaining . . . an individual to aid in . . . prostitution." Minn. Stat. § 609.321, subd. 7a(1) (2014).

Quinn testified that although promoting prostitution and sex trafficking are analogous, in prostitution, a person works for him or herself, while in sex trafficking, another person is in control and arranges ads, provides transportation, and provides a sense of security for the person being trafficked. This definition was legally imprecise. But Quinn's testimony was unlikely to have confused the jury because Weaver was not charged with sex trafficking, and the evidence presented on the process of placing and paying for ads on escort websites and the use of untraceable cell phones and credit cards is also relevant to Weaver's crime of promoting prostitution. *See* Minn. R. Evid. 402 (stating that relevant evidence is generally admissible).

Weaver also argues that Quinn's testimony was not helpful because it duplicated police testimony, and because jurors were not required to understand the mechanics of a complex sex-trafficking operation in order to determine whether he promoted prostitution. *See, e.g.*, *State v. DeShay*, 669 N.W.2d 878, 886 (Minn. 2003) (concluding that gang-expert testimony in a noncomplex drug case was duplicative of other evidence and did not assist the jury in evaluating the evidence). But the jury was unlikely to have experience and knowledge about how the business of promoting prostitution is conducted with current technology. The police did testify as to some of the same terminology that Quinn used. But other parts of her testimony, including the typical relationship of a prostitute and a promoter, were not presented to the jury by other means. The admission of expert opinion on these topics did not constitute plain error.

Further, we conclude that even if an error did occur in admitting the evidence, it did not affect Weaver's substantial rights. *See Sontoya*, 788 N.W.2d at 873 (reciting relevant factors of the strength of the state's case, the pervasiveness of the error, and whether the defendant had an opportunity for response). Here, the state's case was strong and included evidence of Weaver's payment for the escort ads on his phone; his text to E.M. that she "need[ed] to . . . get this money"; and his presence in the parking lot while she was in the hotel with the police officer. In addition, Quinn's testimony was not pervasive, and the district court instructed the jury that expert testimony was entitled to "neither more nor less consideration . . . than any other evidence." Finally, Weaver had the opportunity to respond to Quinn's testimony when he and E.M. both testified that their relationship was not

consistent with his promoting her as a prostitute. Therefore, the testimony did not affect Weaver's substantial rights.

## II. The district court did not abuse its discretion by ordering a downward durational departure.

The state argues that the district court abused its discretion by ordering a downward durational departure from the presumptive guidelines sentence for Weaver's offense. We review the district court's decision to depart from sentencing guidelines for an abuse of discretion. *State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). A district court abuses its discretion when "its reasons for departure are legally impermissible and insufficient evidence in the record justifies the departure." *Id*. If the district court states its reasons for departure in the record, this court examines the record to determine whether the reasons given justify the departure. *Williams v. State*, 361 N.W.2d 840, 844 (Minn. 1985). Even if the reasons given are improper or inadequate, when sufficient evidence of record exists to justify the departure, we will affirm. *Id*.

The Minnesota Sentencing Guidelines provide that a district court must impose the presumptive sentence unless "substantial and compelling circumstances" exist for departure. Minn. Sent. Guidelines 2.D.1.c (2014). "Substantial and compelling circumstances are those demonstrating that the defendant's conduct . . . was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Jones*, 745 N.W.2d 845, 848 (Minn. 2008) (quotation omitted).

In departing from the presumptive sentence, the district court concluded that Weaver's conduct was significantly less serious than typical. The district court explained

that the typical offense of promoting prostitution involved "brutal . . . manipulation and victimization of the prostitute," for the promoter's monetary gain. While one of Weaver's text messages effectively urged E.M. to "get busy" and evidenced a "degree of manipulation," the court observed that Weaver never used violence. Nor did he directly threaten or intimidate E.M. His arrangement with E.M., the court stated, appeared to be assisting in a joint business enterprise, as opposed to "brutal . . . victimization."

This reason for the sentencing departure—less serious conduct in promoting prostitution—is supported by evidence in the record. The relationship between prostitute and promoter is integral to prostitution operations. As the state explained in its brief, that is why, in part, the state called Quinn as an expert witness—to help the jury "understand the nature of these crimes, *the relationships of the various actors*, and the specific terminology used in the trade." (Emphasis added.) And in describing the relationship between a prostitute and a promoter, Quinn likened it to a domestic-violence relationship, with dependency and physical and emotional abuse. She testified:

> And I've never seen a healthy relationship between a pimp and his girls. *It's violent*. And we all know people who are involved in relationships, and we think why the heck don't they get out. This is very much the same way. They're dependent on their pimps; the pimps know their secrets; they know their heart; they love them. Very much like a very bad relationship that people get into.

(Emphasis added.) In response to the prosecutor's question about whether it is possible to have a relationship that was more of "a joint enterprise" as opposed to one "that involves violence and possibly verbal abuse and that sort of thing," Quinn acknowledged "You

know, it happens," but she further explained there was always "some type of manipulation."

One reading of Quinn's expert testimony is that while most promoter-prostitute relationships are violent, it was possible to have one operated as a "joint enterprise," but even then some degree of manipulation is involved. Given this expert testimony about the typical relationship between prostitutes and their promoters and the contrast between that and the nonviolent relationship between E.M. and Weaver, the district court's reason for determining that Weaver's conduct was less serious than that involved in the typical promotion-of-prostitution offense is supported by evidence in the record. *See Williams*, 361 N.W.2d at 844. Accordingly, the district court did not abuse its discretion by concluding that Weaver's conduct was less serious than conduct typically involved in promotion-of-prostitution cases. *See* Minn. Sent. Guidelines 2.D.3.a(5) (permitting a departure based on "substantial grounds [that] exist that tend to excuse or mitigate the offender's culpability, although not amounting to a defense").

The state argues that the district court's comments comparing the presumptive sentence for Weaver's offense with sentences for certain criminal-sexual-conduct offenses show that the district court considered irrelevant information and suggest that the court disagreed with the presumptive sentence for Weaver's offense, which is not a valid ground for departure. *See State v. Carter*, 424 N.W.2d 821, 823 (Minn. App. 1988) (stating that "[m]ere disagreement with the guidelines does not justify a departure from them"). We agree. The district court's reference to sentences for other crimes, taken by itself, does not articulate a valid ground for departure.

But even when some of the district court's given reasons are improper, we will affirm if the record contains sufficient evidence to justify the departure. *Williams*, 361 N.W.2d at 844. We note that here, the state failed to present evidence by which the jury could infer that Weaver and E.M. had a violent relationship, such as any allegations of domestic abuse. And as discussed above, on this record the district court did not abuse its discretion by determining that the amount of abuse and control in Weaver's relationship with E.M. made his conduct less serious than that involved in the typical promotion-of-prostitution offense.

The state further contends that the district court gave legally improper reasons for its downward durational departure because a lack of violence is already contemplated in the guidelines sentencing for Weaver's offense.[2] If Weaver *had* inflicted bodily harm on E.M., the state argues, he would have been sentenced instead under a penalty which establishes a higher statutory maximum sentence when aggravating factors are present. *See* Minn. Stat. § 609.322, subd. 1(b) (2014) (providing that a person convicted of promoting prostitution or sex trafficking may be sentenced to up to 25 years in prison, a fine of up to $60,000, or both, if certain aggravating factors are present); *see also* Minn. Sent. Guidelines 2.G.9 (2014) (establishing a higher presumptive sentence for offenders sentenced under subdivision 1(b)). But the possibility of an *increased* sentence based on aggravated conduct does not compel a conclusion that the district court gave improper

[2] The penalty provision for Weaver's offense of promoting prostitution provides a maximum penalty of imprisonment for not more than 15 years or payment of a fine of not more than $40,000 or both. *See* Minn. Stat. § 609.322, subd. 1a.

reasons when it issued a *lesser* sentence based on mitigating factors. We reject the state's argument based on these penalty provisions.

Finally, the state, citing cases involving aggravated sentencing, contends that the district court abused its discretion in the length of the departure ordered because Weaver's offense did not involve "severe mitigating factors." *See, e.g.*, *State v. Spain*, 590 N.W.2d 85, 89 (Minn. 1999) (noting proportionality in sentencing and holding that the district court abused its discretion in sentencing when aggravating factors did not justify a triple durational sentencing departure). But the sentencing guidelines recognize that "[a] departure is . . . an exercise of judicial discretion." Minn. Sent. Guidelines 2.D.1. And we note that in this case, if Weaver had had zero, rather than four, criminal-history points, the presumptive guidelines sentence for his offense would have been 48 months, the sentence that he received. *See* Minn. Sent. Guidelines 4.B. The sentence actually imposed therefore falls within the range generally contemplated for such an offense. We conclude that in this case, the downward durational departure ordered is not an abuse of the district court's broad discretion.

**III. The warrant of commitment requires correction.**

Weaver was charged by amended complaint with violating Minn. Stat. § 609.322, subd. 1a(2), promotion of prostitution of an individual, and the jury found Weaver guilty of that offense. The warrant of commitment, however, states that Weaver was convicted of violating Minn. Stat. § 609.322, subd. 1(a) (2014), which refers to promotion of prostitution with respect to a person under 18 years of age. Both parties agree that the warrant incorrectly states the offense of which Weaver was convicted. Therefore, we

reverse and remand to the district court for correction of the warrant of commitment to accurately reflect Weaver's conviction offense. *See* Minn. R. Crim. P. 27.03, subd. 10 (stating that clerical mistakes in a judgment or order based on omission or oversight "may be corrected by the court at any time"); *id.*, subd. 9 (allowing the court "at any time [to] correct a sentence not authorized by law").

**Affirmed in part, reversed in part, and remanded.**

**WORKE**, Judge (concurring in part, dissenting in part)

I agree with the majority that the admission of Ann Quinn's testimony did not constitute plain error affecting Weaver's substantial rights and that the warrant of commitment should be corrected. I respectfully dissent from the majority's decision on sentencing, however, and would conclude that the district court abused its discretion by imposing a downward durational departure.

The Minnesota Sentencing Guidelines provide that the district court must impose the presumptive sentence unless "substantial and compelling" reasons for departure exist. Minn. Sent. Guidelines 2.D.1.c (2014). "Substantial and compelling circumstances are those circumstances that make the facts of a particular case different from a typical case." *Taylor v. State*, 670 N.W.2d 584, 587 (Minn. 2003) (quotation omitted). The district court reasoned in part that its downward departure was justified because Weaver "was not the type of classic, ruthlessly predatory violent, and exploitative pimp that [the district court] usually see[s] in these cases." But this description of Weaver is based largely on his character, not his actions in committing the offense. The district court may consider only offense-related factors, not offender-related factors, when addressing a downward durational departure. *State v. Peter*, 825 N.W.2d 126, 130 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013). Therefore, consideration of Weaver's personal characteristics was not appropriate in determining whether his crime was typical of the offense of promoting prostitution. *See Taylor*, 670 N.W.2d at 587.

The Minnesota Sentencing Guidelines are designed to "maintain uniformity, proportionality, rationality, and predictability in sentencing." Minn. Stat. § 244.09, subd. 5

(2014). As the majority notes, in making its decision to depart, the district court also compared the presumptive sentence for Weaver's offense to those for certain criminal-sexual-conduct offenses. But the district court's reference to sentences for other crimes was not relevant when it imposed Weaver's sentence on his offense of promoting prostitution. The district court's belief that Weaver's offense should carry a shorter sentence based on this comparison does not justify a downward departure. *See State v.Weaver*, 796 N.W.2d 561, 576 (Minn. App. 2011) (stating that general disagreement with the sentencing guidelines or the policy on which they are based does not justify a departure).

Finally, I disagree with the majority's conclusion that the record supports a determination that Weaver's conduct was less serious than that involved in a typical promotion-of-prostitution case. When addressing a motion for a downward durational departure, the district court must "whether the offense was significantly less serious that the typical conduct involved in that offense." *State v. Solberg*, 869 N.W.2d 66, 69 (Minn. App. 2015), *aff'd*, 882 N.W.2d 618 (Minn. 2016). Although E.M. testified that Weaver did not physically or emotionally abuse her, Quinn testified that there is always some manipulation in the prostitute-promoter relationship. E.M.'s testimony to support Weaver does not mean that no manipulation occurred in their relationship. Further, the evidence shows that Weaver's phone contained a text pressuring E.M. to "get the money." I would conclude that under these circumstances, the record does not support a downward departure on the basis that Weaver's crime was significantly less serious than the typical offense of promoting prostitution. *See id*.

Because I believe that the district court based its departure on improper reasons, and that its stated reasons for departure are not supported in the record, *State v. Williams*, 361 N.W.2d 840, 844 (Minn. 1985), I would reverse the district court's sentencing order and remand for re-sentencing.