STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1267

State of Minnesota,
Respondent,

vs.

Jonathan Dennis Bromen,
Appellant.

Filed July 17, 2023
Affirmed
Bryan, Judge

Wadena County District Court
File No. 80-CR-21-807

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Kyra L. Ladd, Wadena County Attorney, Wadena, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Jesson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from the judgments of conviction for felony domestic assault and threats of violence, appellant argues that he is entitled to a new trial because the district

court plainly erred by admitting character evidence. Because we conclude that any error in admitting the challenged evidence did not affect appellant's substantial rights, we affirm.

FACTS

On October 26, 2021, respondent State of Minnesota charged appellant Jonathan Dennis Bromen with felony domestic assault and threats of violence, in violation of Minnesota Statutes sections 609.2242, subdivision 4 (2020) and 609.713, subdivision 1 (2020), respectively. The state later amended the complaint and added a charge of second-degree assault in violation of Minnesota Statutes section 609.222, subdivision 1 (2020). The evidence presented at trial established the following facts.

Bromen and his wife, M.B., are the parents of two children. They separated, and in October 2021, the two children lived with Bromen's sister, B.J.F., who was providing foster care while a child in need of protection or services (CHIPS) petition was pending concerning the children. On October 24, 2021, Bromen was at M.B.'s house, and M.B. was talking with B.J.F. on the phone. Bromen became angry and aggressive when he learned that M.B. would be visiting the children at B.J.F.'s residence that night but he was not welcome. M.B. testified that Bromen "said that he would slit my throat, that he would choke me out, that he would cut my hands off for taking his children away."

B.J.F. remained on the phone with M.B. during this time and testified she overheard Bromen "cussing and swearing and saying some really horrible things." B.J.F. testified she heard Bromen mention "the cutting of the hands of anybody who takes his kids" and declare that M.B. "was no longer allowed to leave." After the call ended, B.J.F. tried calling M.B. again, but the calls went directly to M.B.'s voicemail. B.J.F. feared that

Bromen would physically harm M.B. B.J.F. was unable to reach M.B. for roughly an hour, so she called law enforcement and asked them to conduct a welfare check on M.B.

M.B. testified that after her conversation with B.J.F., Bromen attacked her. M.B. explained that she tried to use her phone to record Bromen as he was yelling. Bromen discovered M.B. was filming him and broke her phone by throwing it on the ground. Then, Bromen assaulted her, putting a pillow over her face, choking her with his hands, and holding what M.B. believed was a crescent wrench to her neck, scraping her neck. M.B. also testified that Bromen hit her, striking her nose with his hand and breaking her glasses. M.B. further testified that Bromen swung a hatchet as if he was going to strike her with it but hit the bedframe instead. After he stopped assaulting her, Bromen gave M.B. his phone so she could call B.J.F. to come pick her up. M.B. used the phone to call 911 instead. This 911 call was admitted into evidence. At one point during the call, M.B. informed the dispatcher that Bromen was yelling that he would kill M.B. A video recording taken by M.B. on the night of the offense was also admitted into evidence, showing Bromen agitated, aggressive, and making threats to harm M.B.

Officer Blake Petrich arrived at M.B.'s home around two minutes after her 911 call, and another officer arrived shortly thereafter. M.B. reported to the officers that Bromen choked her, struck her multiple times, and threatened to kill her. After one of the officers observed obvious physical injuries, Petrich photographed the marks on M.B.'s face and the abrasions across her neck. Petrich arrested Bromen.

The dispatcher who answered B.J.F.'s call testified at trial. She explained that B.J.F. reported to her that Bromen "has in the past gotten angry and has been physically violent,

and B.J.F. could hear him yelling in the background." About ten minutes later, the same dispatcher answered M.B.'s 911 call. The recordings of both calls to police were introduced into evidence at trial.

The state also presented the testimony of B.J.F., who explained that Bromen and M.B. were permitted by social services to visit the children if B.J.F. approved of the visit. When the state asked why B.J.F. would allow M.B. but not Bromen to visit the children, B.J.F. explained that she was concerned that his unpredictable behavior could endanger the children:

> Because I've never really had that kind of interaction with [M.B.], but [Bromen's] always kind of had a—a very—bad behavior and unexpected timing. Like he can randomly just freakout, and I can't control that so I told Social Services that I wasn't going to be able to control his behavior in front of the kids and so I had to decline giving him visitation. Cause he—he said I couldn't put the kids in any bad situation, so—but I didn't think that I would have that with [M.B.].

The state specifically asked B.J.F. if she was aware of Bromen making any threats against people who would keep him away from his children. B.J.F. testified that she was aware of such threats and recounted that "[Bromen] said he would cut the hands off anyone who takes his kids." Finally, the state asked about the circumstances of B.J.F.'s call to law enforcement that she made requesting a welfare check for M.B. B.J.F. stated that she "was worried that [Bromen] was going to hurt [M.B.]" As she explained the basis for this concern, "Because [Bromen] has a history of . . . beating [M.B.] up," defense counsel objected to the relevance of this statement. The district court overruled the objection but did not state a reason for its ruling. Before a recess, the district court invited the parties to

make a record of the evidentiary arguments outside the presence of the jury, but both parties declined to do so.

In addition to her testimony regarding the assault, M.B. also testified about the nature of her relationship with Bromen. She explained that she and Bromen lived separately because of a "domestic that happened," which caused M.B.'s landlord to prohibit Bromen from living at M.B.'s house. On cross-examination, defense counsel asked additional questions about Bromen's past behavior, explaining that he wanted M.B. to provide a "fuller view of [her] relationship with . . . Bromen." In response to one of these questions, M.B. stated that during a fight, Bromen "kicked [her] in the crotch and head-butted [her]." Defense counsel also elicited testimony that Bromen started abusing M.B. before the children were born, Bromen refused to take a drug test during the CHIPS proceedings, and Bromen treated M.B. so poorly that she wanted to die.[1]

Bromen did not testify at trial, and after the close of evidence, the jury acquitted Bromen of second-degree assault, but the jury found him guilty of felony domestic assault and threats of violence. The court sentenced Bromen to 36 months in prison for felony domestic assault. This appeal follows.

DECISION

Bromen asserts that the district court erred in admitting the following four statements: (1) B.J.F. stated that "[Bromen] said he would cut the hands off anyone who takes his kids"; (2) B.J.F. stated that Bromen had "a history of . . . beating [M.B.] up";

[1] On appeal, Bromen does not challenge the admission of this testimony.

(3) B.J.F. made a general reference to Bromen's "bad behavior and unexpected timing"; and (4) the B.J.F.'s call to law enforcement included the unredacted statement by B.J.F. that "[Bromen] has had a history of you know, being physically angry."

Because Bromen did not object to the evidence at trial, we review the admission of that evidence for plain error.[2] *See Vasquez*, 912 N.W.2d at 649-50 (stating that forfeited issues are reviewed for plain error). The plain error standard requires an appellant to show three elements: the commission of an error, that is plain, and that affected the appellant's substantial rights. *Pulczinski v. State*, 972 N.W.2d 347, 356 (Minn. 2022). When each element is satisfied, "an appellate court may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id*. And if any element of the plain-error test is not satisfied, the reviewing court need not consider the others. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017).

Our focus in this opinion centers on the third element. "To show that the error affected substantial rights, the defendant bears the heavy burden of showing that the error was prejudicial . . . ." *State v. Burg*, 648 N.W.2d 673, 677 (Minn. 2002) (quotation

[2] We acknowledge that Bromen objected during trial to one of the statements on the basis of relevance. On appeal, however, Bromen does not make any specific or substantive argument regarding relevance or Minnesota Rule of Evidence 401, which is not mentioned in Bromen's brief. Because the only trial objection to any of the four identified inadmissible statements related to a basis for exclusion that is not addressed on appeal, we will review the admission of all four statements for plain error. *See State v. Mosley*, 853 N.W.2d 789, 797 n.2 (Minn. 2014) ("But to properly preserve a claim that evidence should be excluded under the Minnesota Rules of Evidence, a defendant must timely object and state the *specific ground* of objection." (quotations omitted)); *see also State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018) ("A defendant's objection to the admission of evidence preserves review only for the stated basis for the objection . . . .").

omitted). An error is prejudicial if there is a reasonable likelihood that the error had a significant effect on the jury's verdict. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998); *see also State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011) ("The third prong of the plain error test is the equivalent of a harmless error analysis."). "When considering whether an error affected a defendant's substantial rights within the context of the plain-error rule, [this court] consider[s] 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. Fraga*, 898 N.W.2d 263, 277 (Minn. 2017) (quotation omitted).

We conclude that Bromen's substantial rights were not affected by the admission of any of the four identified statements for four reasons: (1) the content of the challenged evidence was admitted into evidence through other witnesses' testimony not challenged on appeal; (2) Bromen does not explain how the evidence was not otherwise admissible under Minnesota Statutes section 634.20 (2022); (3) the state did not address the challenged evidence in closing argument; and (4) the evidence of Bromen's guilt was strong.[3]

First, the content of three of the challenged statements was also admitted into evidence through other testimony that is not challenged on appeal. For instance, the statement by B.J.F. that "[Bromen] said he would cut the hands off anyone who takes his kids" is very similar to M.B.'s unchallenged testimony that Bromen "said that he would slit my throat, that he would choke me out, that he would cut my hands off for taking his

[3] In light of this conclusion, we need not address the remaining elements of plain error review. *Webster*, 894 N.W.2d at 786.

children away." Likewise, the statement by B.J.F. that Bromen had "a history of . . . beating [M.B.] up" is substantively indistinguishable from M.B.'s unchallenged statement that Bromen had been violent towards her in the past, including the testimony offered by M.B. under cross-examination from defense counsel regarding Bromen's past abuse. Bromen also challenges B.J.F.'s call to law enforcement on the basis that it was not redacted to omit B.J.F.'s statement that "Bromen has had a history of you know, being physically angry." The dispatcher's unchallenged testimony, however, included a similar statement: the dispatcher testified that B.J.F. reported to her that Bromen "has in the past gotten angry and has been physically violent, and B.J.F. could hear him yelling in the background." Because Bromen identifies only the statements of B.J.F. in his argument for reversal and makes no argument challenging these other, nearly identical statements, we must assume that these statements properly remain in the trial record. We are not able to discern any effect that the admission of the challenged statements by B.J.F. had on Bromen's substantial rights in light of the other statements in the evidentiary record.

Second, although Bromen presents an argument why the four challenged statements by B.J.F. do not satisfy Minnesota Rule of Evidence 404(b), these statements could also fall within the scope of Minnesota Statutes section 634.20.[4] Section 634.20 provides for the admission of evidence of conduct by the accused against the victim of domestic abuse

[4] We acknowledge that the statements might also constitute immediate episode evidence, *see State v. Riddley*, 776 N.W.2d 419, 425 (Minn. 2009) (describing immediate episode evidence as "a narrow exception to the general character evidence rule," allowing the admission of a prior bad act when "there is a close causal and temporal connection between the prior bad act and the charged crime"), but we need not address this issue in light of our conclusion that Bromen does not present any arguments regarding section 634.20.

in the past and specifically includes prior acts of "domestic abuse." Minn. Stat. § 634.20; *see also State v. Barnslater*, 786 N.W.2d 646, 650 (Minn. App. 2010) ("Evidence presented under section 634.20 is offered to demonstrate the history of the relationship between the accused and the victim of domestic abuse."), *rev. denied* (Minn. Oct. 27, 2010); *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010) (noting that section 634.20 evidence helps "to put the alleged crime in the context of that relationship"), *rev. denied* (Minn. Nov. 16, 2010). The state argues that absent any explanation or argument on appeal that the district court would have erred in admitting the challenged statements under section 634.20, Bromen cannot establish that the admission of these statements affected his substantial rights. We agree with the state that Bromen has made no argument regarding section 634.20 or any explanation of how his rights could have been affected given an alternative basis for admission of the challenged statements.

Third, we observe that the state did not dwell on, or even address, the challenged evidence in closing argument. *See Fraga*, 898 N.W.2d at 273-74 (determining that the admission of relationship evidence was harmless where the state "did not dwell on the other bad acts evidence . . . mentioning it only once during closing argument"); *State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (determining that the admission of relationship evidence was harmless when the state made "sparse use of the relationship evidence in closing argument"). The effect that the challenged statements by B.J.F. had on Bromen's substantial rights is minimal, given the state's emphasis on other evidence during its closing argument.

Fourth and finally, the state presented other evidence that strongly indicated Bromen's guilt, aside from the challenged statements. M.B. testified, specifically and consistently, about the events that led to the charges against Bromen. Evidence was presented that M.B. called 911 to report the incident. The 911 call in which M.B. informed the dispatcher that Bromen was yelling that he would kill M.B. was admitted into evidence. The dispatcher testified that "[M.B.'s] voice sounded very pleading, very desperate, very panicky, and she kept asking 'please hurry, please hurry.'" The photographs entered into evidence of M.B.'s injuries are consistent with her allegations, as was the video recording from the incident showing Bromen agitated, aggressive, and making threats to harm M.B. The testimony of the police officers who arrived at M.B.'s house the night of the charged offense matched the M.B.'s testimony, and one of the officers observed that M.B. had obvious physical injuries. In sum, this other, unchallenged evidence presented to the jury is sufficient for us to conclude that there is no reasonable possibility that the admission of the challenged statements significantly affected the jury's verdict. Because he has failed to establish that the admission of the challenged evidence impacted his substantial rights, we affirm Bromen's convictions.

Affirmed.