STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1175

State of Minnesota,
Respondent,

vs.

Matthew Scott Clark,
Appellant.

Filed June 19, 2017
Affirmed
Klaphake, Judge[*]

Otter Tail County District Court
File No. 56-CR-15-3661

Lori Swanson, Attorney General, Michael T. Everson, Assistant Attorney General, St. Paul, Minnesota; and

David J. Hauser, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna M. Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Klaphake, Judge.

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

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

KLAPHAKE, Judge

Appellant challenges his conviction of violating a harassment restraining order (HRO), arguing that (1) the district court abused its discretion by permitting a police officer to give vouching testimony; (2) the prosecutor committed misconduct by eliciting evidence of other bad acts without following the procedures set forth in Minn. R. Evid. 404(b); and (3) the district court abused its discretion by admitting prejudicial relationship evidence that had no probative value. We affirm.

D E C I S I O N

I.

Appellant Matthew Scott Clark argues that the district court abused its discretion by permitting Officer Nicholas Stromme of the Perham Police Department to testify that he did not believe appellant was telling the truth about the telephone call he made to G.A. in violation of the HRO. "[V]ouching . . . occurs when the government implies a guarantee of a witness's truthfulness, refers to facts outside the record, or expresses a personal opinion as to a witness's credibility." *State v. Lopez-Rios*, 669 N.W.2d 603, 614 (Minn. 2003) (quotation omitted). A witness may not vouch for or against the credibility of a witness because it usurps the jury's authority to determine the credibility of a witness. *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998).

Appellant did not object during the testimony and, therefore, we review the district court's decision to admit the testimony for plain error. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). Under the plain-error standard, a defendant must show error that

is plain and that affected the defendant's substantial rights. *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). If a defendant establishes these three elements, an appellate court will correct the error "only if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* "A plain error affects the substantial rights of the defendant when there is a reasonable likelihood that the error substantially affected the verdict." *Id.* (quotation omitted).

Appellant's characterization of the vouching testimony is misleading. At trial, Stromme testified that appellant told him that he accidentally called G.A. and Stromme replied that he did not believe it was an accident. He repeated that he told appellant he did not believe him and that the HRO did not state "that accidents are okay or exceptions." After more questioning, Stromme said he told appellant he didn't believe it was an accident because of the text messages sent to G.A.'s boyfriend's phone and that he was "just not buying the accident excuse."

In *Ferguson*, the district court permitted the state to read a portion of the transcript of defendant's police interview. 581 N.W.2d at 835. In the transcript, the officer conducting the interview accused the defendant of lying. *Id.* The supreme court concluded that this was not impermissible vouching; rather, reading the entire transcript provided context for the defendant's statements. *Id.*

Like the police officer in *Ferguson*, Stromme did not testify that appellant was lying and G.A. was telling the truth, which would have been impermissible vouching testimony. *See id.* Appellant has failed to demonstrate that Stromme's statements were inadmissible

vouching testimony, and, therefore, the district court did not plainly err by permitting the testimony.

II.

Appellant argues that the district court abused its discretion by permitting the prosecutor to offer evidence of other bad acts, or *Spreigl* evidence,[1] for which no notice had been given. Appellant did not object to admission of the testimony; therefore, we review the district court's decision for plain error. Because appellant is alleging that the prosecutor committed misconduct by intentionally eliciting the evidence, the standard of review for plain error is modified. *State v. Smith*, 825 N.W.2d 131, 139 (Minn. App. 2012), *review denied* (Minn. Mar. 19, 2013). Under this modified standard, the state bears the burden of persuasion that the alleged misconduct did not affect the defendant's substantial rights. *Id.* "This court will reverse only if the misconduct, when considered in light of the whole trial, impaired the defendant's right to a fair trial." *Id.* (quotation omitted).

Appellant objects to the following testimony: on direct examination, Stromme testified that, as part of his investigation, he called appellant, who swore at him and hung up. Appellant called Stromme back to apologize for swearing at him and to ask him not to charge him with violation of the HRO. On cross-examination, defense counsel asked Stromme if he knew about appellant's previous convictions for HRO violations, with the intention of showing that appellant pleaded guilty when he knew he was guilty. On

[1] *Spreigl* evidence is evidence of other crimes, wrongs, or acts, which is not admissible to show a defendant's character or action in conformity with his character. *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). This has been codified in Minn. R. Evid. 404(b).

re-direct, the prosecutor asked Stromme if he knew that on those prior occasions appellant also swore at the officers and called back to apologize and ask not to be charged.

Minn. R. Evid. 404(b) prohibits the use of evidence of a defendant's other crimes, wrongs, or bad acts to prove his character or that he acted in conformity therewith. Such evidence is admissible for limited purposes, including, among others, proof of motive, opportunity, intent, or identity. The state must give notice of its intent to offer such testimony, explain the relevance, support the offer with clear and convincing evidence, and demonstrate that its probative value outweighs its prejudicial effect. *Id*.; *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn. 2006). We review the district court's decision to admit such testimony for an abuse of discretion. *Id.* at 685.

But evidence relating to other crimes or bad acts committed by a defendant that are "necessarily, but incidentally, part of the substantive proof of the offense" are not considered to be *Spreigl* evidence. *State v. Roy*, 408 N.W.2d 168, 172 (Minn. App. 1987), *review denied* (Minn. July 22, 1987). In *Roy*, the defendant had stolen and damaged property and fraudulently transferred the title of the murder victim's van to himself. *Id.* at 171. The district court determined that this evidence provided a context for the murder and was necessary to the presentation of the case because it completed the story of the crime. *Id.* This court affirmed, concluding that these were not *Spreigl* acts because this "[e]vidence of [the defendant's] efforts to destroy the crime scene was offered to complete the picture of his extensive efforts to cover up the offense." *Id.* Here, appellant's conversation with Stromme and his request that Stromme not charge him are part of the incidental circumstances of the offense.

The testimony that appellant had acted in a similar manner on other occasions was properly admitted after Stromme was asked by appellant's attorney on cross-examination if he knew about appellant's prior convictions.

> "Opening the door" occurs when one party by introducing certain material creates in the opponent a right to respond with material that would otherwise have been inadmissible. The opening-the-door doctrine is essentially one of fairness and common sense, based on the proposition that one party should not have an unfair advantage and that the factfinder should not be presented with a misleading or distorted representation of reality.

State v. Valtierra, 718 N.W.2d 425, 436 (Minn. 2006) (quotations and citations omitted). *See also State v. Bailey*, 732 N.W.2d 612, 622 (Minn. 2007) (concluding defendant opened the door to further questioning by the state in order to correct misleading statements). Even when a defendant has opened the door to further questioning, however, a court has to cautiously weigh whether the prejudicial nature of the evidence would chill a defendant's right to testify. *Valtierra*, 718 N.W.2d at 436.

Here, defense counsel attempted to show that appellant pleaded guilty when he was truly guilty in order to buttress his claim that appellant had accidentally called G.A. The fact that appellant reacted the same way each time tends to correct a misleading representation. *Id.* The district court did not plainly err by admitting this testimony.

III.

Appellant argues that the district court abused its discretion by admitting relationship evidence that had little probative value but was "substantially prejudicial" to appellant. We review the district court's admission of relationship evidence for an abuse

of discretion. *State v. Hormann*, 805 N.W.2d 883, 888 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

"[R]elationship evidence is character evidence that may be offered to show the 'strained relationship' between the accused and the victim and is relevant to establishing motive and intent and is therefore admissible." *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009) (quotation omitted). Such evidence is treated differently from *Spreigl* evidence and is not subject to the notice requirements of Minn. R. Evid. 404(b). *Id.* But the district court must first determine that there is clear and convincing evidence that the conduct occurred and that the probative value of the evidence outweighs its prejudicial effect. *Hormann*, 805 N.W.2d at 890.

Appellant argues that the relationship evidence presented here was prejudicial because the jury needed only to decide a "straightforward factual question . . . whether the call was an accident." But this involves a credibility determination because appellant was the sole proponent of that assertion. The history of a relationship that included as many as 100 text messages and 78 telephone calls in one eight-hour period is probative as to whether this one incident was accidental and whether appellant was credible. Appellant was charged with making a single telephone call in violation of the HRO; without the relationship evidence, the jury would be unable to understand G.A.'s reaction. *See Hormann*, 805 N.W.2d at 891 (concluding that "stalking charge cannot be proved without some context in order to demonstrate why [victim] was frightened when she suspected that [defendant] was tracking her").

Before permitting G.A. to testify about the relationship evidence, the district court instructed the jury that the evidence was to be used for the sole purpose of demonstrating the relationship between appellant and G.A. and the jury could not convict appellant for conduct based on the relationship evidence. "A district court's limiting instruction lessens the probability of undue weight being given by the jury to [relationship] evidence." *State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (quotation omitted). We presume that a jury follows the district court's instructions. *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). The district court did not abuse its discretion by admitting the relationship testimony.

We decline to review appellant's pro se claims, which are unsupported by argument or citation to legal authority. *See State v. Bartylla*, 755 N.W.2d 8, 22-34 (Minn. 2008) (declining to review pro se issues that "are lacking in supporting arguments and/or legal authority" and that do not reveal "prejudicial error . . . on mere inspection").

Affirmed.