STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1352

State of Minnesota,
Respondent,

vs.

Santino Lamar Watson,
Appellant.

Filed July 31, 2017
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CR-16-3078

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

Samuel J. Clark, St. Paul City Attorney, Lynel Rae Nelson, Assistant City Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant challenges his misdemeanor convictions, arguing that it was reversible plain error for the state to elicit testimony that violated the district court's ruling regarding relationship evidence under Minn. Stat. § 634.20 (2016). Because we conclude there was no error, we affirm.

FACTS

Appellant Santino Watson and L.H. were in a relationship from 2006 to 2016. In March 2016, L.H. called 911 to report that she had maced appellant because he would not stop beating her. Later that night, she called to ask that police come to her apartment because appellant and his sister were about to enter it. The police came and investigated. As a result of their investigation, appellant was charged with two counts of misdemeanor domestic assault and one count of misdemeanor disorderly conduct.

On June 29, before the trial, the district court noted that the state intended to introduce evidence of appellant's relationship with L.H. under Minn. Stat. § 634.20.[1] The evidence would be limited to three points: (1) appellant and L.H. had been together for ten years, during which L.H. said appellant had hit and beat L.H.; (2) appellant "punched [her] a few days ago"; and (3) appellant "hit [her] with a belt." The district court asked the prosecutor for a time frame for the abuse; the prosecutor replied that the police report

[1] Minn. Stat. § 634.20 provides in relevant part: "Evidence of domestic conduct by the accused against the victim of domestic conduct . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice . . . . 'Domestic conduct' includes, but is not limited to, evidence of domestic abuse. . . ."

indicated ten years of hitting and beating, "quite recent" punching, and hitting with a belt "before." The district court then said that it would have to give a cautionary instruction if the relationship evidence were admitted and that such instructions usually specified a time frame. Appellant's attorney argued that any probative value of such evidence would be outweighed by the danger of unfair prejudice and would confuse the jury. The district court said that the state should limit L.H.'s testimony and be as specific as possible, adding that the more specific an incident was, the more likely it was that evidence about the incident would be admitted.

At the end of the day before trial, the prosecutor told the district court and appellant's attorney that, when he asked L.H. about the time frame of the abuse, she said: (1) the hitting and beating occurred over the entire ten years and got progressively worse, (2) the punching incident "a few days ago" was the current incident, and (3) appellant hitting her with a belt was three to four months prior to the current incident. The prosecutor noted that L.H.'s testimony, in light of what had happened to her over ten years, would be "a very . . . sanitized and very limited instance [] of [Minn. Stat. §] 634.20 [(providing that evidence)]."

The district court then found that:

> [T]he State's proposed testimony concerning [appellant] hitting and beating [L.H.] over the course of their ten-year relationship, getting progressively worse recently[,] is appropriate. And also the statement about . . . [appellant] hitting [L.H.] with a belt three or four months prior to the charge[d offense], that would likely be November or December 2015, that is also appropriate.
>
> Now, I will give this caveat to the State. Hitting an individual with a belt three or four months ago is pretty

> specific. . . . [But on t]he issue of hitting and beating [L.H.] over the course of the 10-year relationship, the court is not going to permit the State to go on and on regarding everything that has ever happened between [appellant] and [L.H.]. . . .
>
> . . . .
>
> . . . [T]he Court will not permit endless questioning on various incidents. It sounds from our discussion that the State does not intend to do that. [The state] will limit it most likely to more current instances, and the Court will be watching closely to make sure that the State holds to that promise.

On the first day of trial, the district court told the attorneys it would allow L.H. to testify that appellant "hit and beat her over the course of their 10-year relationship, and that [he] hit her with a belt three to four months before the current offense," but would not allow "a long history of this relationship."

Before L.H.'s relationship testimony, the district court gave the jury a cautionary instruction.

> The State is about to introduce evidence of conduct from November or December of 2015, and perhaps a few instances earlier in time [than] December of 2015.
>
> This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between [appellant] and [L.H.], in order to assist you in determining whether [appellant] committed those acts with which [he] is charged in the complaint.
>
> [Appellant] is not being charged [with] and may not be convicted of any behavior other than the charged offenses. You are not to convict [him] on the basis of conduct that [L.H.] may testify about from November or December of 2015 or earlier in time. To do so might result in unjust double punishment.

The prosecutor then questioned L.H.:

> Q: [Y]ou've known [appellant] or been a couple for about 10 years; is that right?
>
> A: Yes.

Q: And have you ever been *assaulted or abused* by him during those 10 years?
A: Yes. The whole time. It just got worse.
Q: And is there anything that you specifically remember?
A: Yeah. I remember this one day when he beat me real bad with a belt.
Q: Do you know approximately when that was?
A: I think around November. It was November or December, one of those.
Q: Of 2015?
A: Yeah.
Q: So in March of 2016 when you were saying you were scared, is part of it because of that past abuse?
A: Yes.

(Emphasis added.)

Appellant did not object to the words "assaulted or abused" at trial, but argues on appeal that it was reversible error for the prosecutor to ask L.H. if she had been "assaulted or abused" instead of "hit or beaten" by appellant.

D E C I S I O N

"Appellate courts should use the plain error doctrine when examining unobjected-to prosecutorial misconduct." *State v. Ramey*, 721 N.W.2d 294, 299 (Minn. 2006). "[B]efore an appellate court reviews unobjected-to trial error, there must be (1) error, (2) that is plain, and (3) affects substantial rights. If these three prongs are satisfied, the court then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.* at 302 (citation omitted). "[T]he burden . . . continue[s] to be on the nonobjecting defendant to demonstrate both that error occurred and that the error was plain." *Id.* "An error is plain if it was clear or obvious. Usually this

is shown if the error contravenes case law, a rule or a standard of conduct." *Id.* (quotation and citation omitted).

> [W]hen the defendant demonstrates that the prosecutor's conduct constitutes an error that is plain, the burden . . . then shift[s] to the state to demonstrate lack of prejudice; that is, the misconduct did not affect substantial rights. . . . [T]he state . . . need[s] 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.

Id. (quotation and citations omitted).

Appellant offers no support for the view that using the words "assaulted or abused" instead of the words "hit or beaten" was plain error. The district court did not specify any particular language; it stressed that L.H.'s testimony was to be limited to a few specific instances rather than list every incident during a ten-year relationship. Because "hitting and beating" are specific terms that necessarily involve violent physical contact, while the terms "assaulting or abusing" are less graphic and more general, it is at least arguable that the prosecutor's choice of words minimized rather than emphasized appellant's treatment of L.H.

Appellant argues that the use of the word "assault" made "[t]he suggestion . . . that [appellant] is known to the courts for his misdeeds." For this argument, he relies on *State v. Jones*, 277 Minn. 174, 177-78, 152 N.W.2d 67, 71 (1967) (concluding that defendant did not have a fair trial and noting that there were "so many separate items of impropriety in the trial that it [was] impracticable to discuss them all"). But *Jones* is distinguishable, most obviously because it involved many errors at trial, while the only error alleged on this appeal is the use of "assaulted and abused" instead of "beat and hit."

In *Jones*, a crime investigator was asked if he recognized the defendant's name when he saw it in an address book, which "[left] with the jury the innuendo that this crime investigator was familiar with [the] defendant and . . . therefore [the] defendant was a man of bad character" and elicited indirectly evidence of the defendant's previous charge that would not have been admissible directly. *Jones*, 277 Minn. at 189, 152 N.W.2d at 78. Here, the jury learned nothing to appellant's disadvantage by the use of the words "assault and abuse" instead of "beat and hit." Moreover, L.H. was not asked if appellant was charged with or convicted of assault or abuse during their relationship; she was asked if he had assaulted or abused her during the relationship. The question was directed to elicit what appellant had done to L.H., not what the legal system had done to appellant.

Appellant also relies on *State v. Underwood*, 281 N.W.2d 337 (Minn. 1979), *State v. Flowers*, 261 N.W.2d 88 (Minn. 1977), and *State v. Hogetvedt*, 623 N.W.2d 909 (Minn. App. 2001), *review denied* (Minn. May 29, 2001), to argue that the state failed to ensure that L.H. knew the limits of permissible testimony. All three cases are distinguishable.

In *Underwood*, when the defendant's attorney asked an arresting officer whether the officer had talked to the defendant, the officer answered that he had asked the defendant if he would put the statement he had just given the officer on tape, and the defendant said he would not. *Underwood*, 281 N.W.2d at 342. The supreme court noted that the defense attorney had not been attempting to elicit improper testimony and that "were this the only error, . . . reversal would be unnecessary," but concluded that "[b]ecause of the nature of this case . . . the officer's improper testimony may have contributed to the defendant's prejudice . . . ." *Id.* Here, there were no allegations of other errors, there is no support for

the position that the use of "assault and abuse" was an error, much less a plain error, and there is no basis to assume that any error prejudiced appellant.

In *Flowers*, the district court issued an order that "it would be inappropriate for the State to introduce evidence or to discuss or mention the [prior] criminal conviction [for an act with the same victim]" and the state referred to the incident underlying that conviction "several times during trial." *Flowers*, 261 N.W.2d at 89. Here, L.H. was questioned and testified only about the two points both the state and the district court said were appropriate relationship evidence. Thus, *Flowers* is distinguishable.

Finally, in *Hogetvedt*, "[the a]ppellant was denied a fair trial when the state's witness, a police officer, disregarded a specific court instruction to refrain from testifying as to his personal opinion regarding [the] appellant's guilt." *Hogetvedt*, 623 N.W.2d at 916. Here, the district court instructed the state to limit relationship evidence to two points, and the state complied.

Appellant has not met any of the elements of the plain-error test for unobjected-to testimony.

Affirmed.