STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1585

State of Minnesota,
Respondent,

vs.

Daniel Lee Plantenberg,
Appellant.

Filed August 7, 2017
Affirmed
Hooten, Judge

Meeker County District Court
File No. 47-CR-15-1070

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, Litchfield, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

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

HOOTEN, Judge

In this appeal from his conviction of second-degree assault, appellant argues that the district court denied him his right to present a complete defense by preventing him from

questioning witnesses about his wife's relationship with the victim at the time of trial. Because appellant was not prejudiced by the exclusion of such evidence, we affirm.

FACTS

On November 29, 2015, appellant Daniel Lee Plantenberg and his wife, H.P., were separated, and H.P. was having her lawyer draft divorce papers. H.P. continued to live at the rural marital home, while Plantenberg lived elsewhere. Around 5:30 p.m., Plantenberg called H.P. wanting to discuss a reconciliation, but H.P. told him that she was busy. About ten seconds later, Plantenberg drove his truck down the driveway to the marital home at a high rate of speed. After exiting the truck, Plantenberg encountered D.H. outside the house. H.P., who described D.H. as a neighbor at trial, had invited D.H. to her house earlier that day. Plantenberg confronted D.H. and told him, "[Y]ou know you're messing with a married woman."

Plantenberg entered the house, yelled at H.P., and pushed her. Plantenberg then left the house and told D.H. to leave. D.H., who was standing by the open door of his vehicle, replied that he was getting ready to leave. Plantenberg went to his truck, grabbed a muzzleloader, pointed it toward D.H., and told him again to leave the property.

Eventually, D.H. left the residence, and Plantenberg fled into a detached garage and then a neighboring field with the muzzleloader. At this point, H.P. called 911. Law enforcement arrived and, after talking with Plantenberg on the phone, were able to take him into custody without incident.

After being read a *Miranda* warning, Plantenberg agreed to talk to a Meeker County sheriff's deputy. Plantenberg admitted to confronting D.H. and arguing with H.P.,

although he denied pushing H.P. Plantenberg stated that he pointed his muzzleloader at D.H.'s vehicle, but admitted that because D.H. was standing next to the vehicle, D.H. probably thought the muzzleloader was pointed at him.

Plantenberg was charged with second-degree assault and making threats of violence, and a jury trial was held in May 2016.[1] The jury found Plantenberg guilty of second-degree assault, but not guilty of threats of violence. The district court sentenced Plantenberg to a guidelines sentence of 36 months. This appeal followed.

D E C I S I O N

Plantenberg argues that the district court deprived him of his constitutional right to present a defense by limiting his examination regarding whether D.H. and H.P. were in a romantic relationship at any point after the incident. Plantenberg contends that he should have been allowed to question H.P. and D.H. regarding whether they were in a romantic relationship at the time of trial in order to determine whether they were biased and had a motive to fabricate their testimony.

At trial, the state moved to exclude any evidence of a relationship between H.P. and D.H., arguing that such evidence was not relevant and "goes to character." Defense counsel stated that he intended to inquire into whether H.P. and D.H. had a relationship in order to provide context to the events surrounding the incident. Defense counsel stated that he

[1] Plantenberg was originally charged with second-degree assault and domestic assault, but the state subsequently amended the complaint by dismissing the domestic assault charge and adding a charge of threats of violence.

"intend[ed] to ask [H.P.] . . . whether or not she is or was involved in a romantic relationship with [D.H.]."

The district court stated that while the potential evidence may be relevant, it "border[ed] on character evidence." As a result, the district court ruled that defense counsel could only ask whether H.P. and D.H. were in a romantic relationship on the date of the incident.[2]

"A criminal defendant has the right to a meaningful opportunity to present a complete defense. This right necessarily includes the ability to present the defendant's version of the facts through witness testimony." *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006) (citation omitted). "The right to present a defense is not without limitations, however—in exercising this right, both the accused and the state must comply with procedural and evidentiary rules designed to ensure both fairness and reliability in the ascertainment of guilt and innocence." *State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003) (quotation omitted).

Rulings regarding the admission of evidence lie within the district court's broad discretion and will not be reversed absent an abuse of discretion. *State v. Hall*, 764 N.W.2d 837, 841 (Minn. 2009). A defendant claiming that the district court erroneously admitted or excluded evidence "must show both the error and resulting prejudice." *Id.*

Bias evidence is admissible to impeach the credibility of testifying witnesses. Minn. R. Evid. 616; *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995) (noting that bias of

[2] Despite this ruling by the district court, Plantenberg did not ask either H.P. or D.H. whether they were in a romantic relationship on the date of the incident.

a witness is "always relevant" to discredit witness' testimony) (quotations omitted). "Evidence of bias is almost always relevant because the jury, as finder of fact and weigher of credibility, has historically been entitled to assess all evidence which might bear on the accuracy and truth of a witness' testimony." *State v. Clifton*, 701 N.W.2d 793, 797 (Minn. 2005) (quotation omitted).

The Minnesota Supreme Court has held that a district court committed reversible error by prohibiting the defendant from cross-examining the victim and a witness about their romantic relationship, reasoning that informing the jury that the victim and witness were "merely friends" could have misled the jury and that "the prohibited cross-examination had the potential to demonstrate" the victim's and the witness' ulterior motives and interest in the outcome of the trial. *State v. Pride*, 528 N.W.2d 862, 866–67 (Minn. 1995). But, the right to introduce evidence for the purpose of showing bias is not unlimited, as such evidence may be excluded if it is overly attenuated or when the danger of unfair prejudice substantially outweighs its probative value. *State v. Larson*, 787 N.W.2d 592, 598–99 (Minn. 2010); *see also* Minn. R. Evid. 403.

Plantenberg did not explicitly argue that the evidence of H.P. and D.H.'s current relationship was admissible to show bias, and the record does not reflect that the district court specifically considered whether the evidence was admissible to show bias or whether the evidence was overly attenuated or the danger of unfair prejudice outweighed the probative value of such evidence. However, even if the district court erred in excluding the evidence here, we conclude that Plantenberg was not prejudiced by the exclusion.

The parties dispute our standard of review in determining whether Plantenberg was prejudiced by the district court's refusal to allow him to present evidence of the victim's relationship with his wife at the time of trial. The state contends that Plantenberg failed to properly preserve the evidentiary issue and therefore plain error review applies. "Under the plain-error standard, relief is available only if there is (1) error, (2) that was plain, and (3) that affected the defendant's substantial rights." *State v. Rossberg*, 851 N.W.2d 609, 618 (Minn. 2014) (quotation omitted). If the test is satisfied, we then determine whether we need to address the error in order "to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

Plantenberg argues that we should apply the more favorable to the defendant harmless error beyond a reasonable doubt standard in determining whether he was prejudiced. If the exclusion of evidence violated a defendant's ability to present a complete defense, an appellate court "will reverse the conviction unless the error is found to be harmless beyond a reasonable doubt." *In re Welfare of M.P.Y.*, 630 N.W.2d 411, 415 (Minn. 2001). "An error is harmless beyond a reasonable doubt if the jury's verdict was surely unattributable to the error." *State v. Davis*, 820 N.W.2d 525, 533 (Minn. 2012) (quotation omitted). "When the alleged error implicates a constitutional right, . . . the [s]tate bears the burden to prove the error was harmless beyond a reasonable doubt." *State v. McAllister*, 862 N.W.2d 49, 59 (Minn. 2015).

We need not resolve the parties' dispute because, even under the harmless beyond a reasonable doubt standard proposed by Plantenberg, we would affirm. Assuming that the district court's exclusion of the evidence was erroneous, the error was harmless beyond

a reasonable doubt because the jury's verdict was surely unattributable to the error. Plantenberg was convicted of second-degree assault. Minn. Stat. § 609.222, subd. 1 (2014), provides that a person is guilty of second-degree assault if he or she "assaults another with a dangerous weapon." Minn. Stat. § 609.02, subd. 10 (2014), defines "assault" as "an act done with intent to cause fear in another of immediate bodily harm or death" or "the intentional infliction of or attempt to inflict bodily harm upon another."

Plantenberg claims that evidence that H.P. and D.H. were in a relationship at the time of trial would have shown the jury that H.P. and D.H. had motive to falsely claim that Plantenberg pointed the muzzleloader at D.H. But, Plantenberg himself corroborated H.P.'s and D.H.'s testimony that Plantenberg pointed a gun in D.H's direction in his post-*Miranda* statement to law enforcement. Although Plantenberg denied pointing the muzzleloader at D.H., he stated, "I pointed [my gun] at [D.H.'s] truck, which, he was standing next to his truck so I'm guessing he probably thought I was pointing at him." When the officer followed up and asked whether D.H. could have perceived that Plantenberg was pointing the muzzleloader at him, Plantenberg stated, "He probably could've." The officer inquired further into where Plantenberg was pointing the gun and where D.H. was standing, and Plantenberg stated again that where he was pointing the gun was "fairly close to where [D.H.] would, he would actually think that I was pointing it at him."

Even if the jury had credited Plantenberg's statement that he was pointing the gun at D.H.'s truck instead of D.H., the jury could have still found that Plantenberg was guilty of second-degree assault, as fear of immediate bodily harm or death is a natural and

probable cause of pointing a gun near a person. *See* Minn. Stat. § 609.222, subd. 1 (defining second-degree assault); *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (stating that "the jury may infer that a person intends the natural and probable consequences of his actions").

Moreover, while the district court ruled that Plantenberg could not inquire into H.P. and D.H.'s relationship at the time of trial, the jury heard testimony suggesting that H.P. and D.H. were in a relationship both at the time of the incident and at the time of trial. D.H. testified that when Plantenberg first confronted him, he stated, "[Y]ou know you're messing with a married woman." And, defense counsel elicited the following testimony from a neighbor who witnessed some of the altercation between Plantenberg and D.H.

> DEFENSE COUNSEL: Did you recall . . . what kind of vehicle [D.H.] had?
> NEIGHBOR: A green Chevy pickup . . .
> DEFENSE COUNSEL: You ever see that vehicle before?
> NEIGHBOR: Oh, yes.
> DEFENSE COUNSEL: Where?
> NEIGHBOR: I see it drive by and go up to [H.P.'s] house. I actually seen it last night between six-thirty and seven.

Defense counsel also elicited testimony from D.H. that he was a guest of H.P. on the evening of the incident and that he is a frequent guest of H.P.[3] The jury heard Plantenberg say in his statement to law enforcement that he thought H.P. was cheating on him with D.H. and that D.H. was his "replacement." Defense counsel relied on this evidence in closing argument, stating that Plantenberg suspected D.H. was his "replacement" and that "[i]t's pretty much common sense, that he's probably right about that." Defense counsel

[3] Defense counsel asked D.H. whether he was a guest of H.P.'s on the evening of the first day of trial, but the state objected and the district court sustained the objection.

also stated that the evidence that D.H. refused to tell Plantenberg his name and that Plantenberg learned D.H.'s name from one of the children "gives you some inference of what . . . shenanigans [are] going on." Because the jury heard this evidence, it was able to consider whether H.P. and D.H.'s apparent relationship affected their testimony.

Additionally, the value of the examination that Plantenberg requested was minimal, given that both H.P. and D.H. gave statements to law enforcement on the date of the incident that were consistent with their statements at trial. The recordings of these statements were played for the jury at trial. In these statements, both H.P. and D.H. stated that Plantenberg pointed the gun at D.H.

Because the district court permitted Plantenberg to inquire into H.P. and D.H.'s relationship at the time of the incident, Plantenberg could have asked H.P. and D.H. whether their apparent relationship at the time of the incident caused them to make false statements to the police. The fact that Plantenberg had the opportunity to question H.P. and D.H. about whether their relationship impacted their statements to law enforcement further demonstrates lack of prejudice to Plantenberg due to the exclusion of evidence.

Under these circumstances, the jury's verdict was surely unattributable to the district court's limitation of Plantenberg's examination of H.P. and D.H.'s relationship and any error was harmless beyond a reasonable doubt.

Affirmed.