STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1874

State of Minnesota,
Respondent,

vs.

Miguel Angel Rodriguez,
Appellant.

Filed August 21, 2017
Affirmed
Randall, Judge[*]

Mower County District Court
File No. 50-CR-15-191

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

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

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

Considered and decided by Cleary, Chief Judge; Schellhas, Judge; and Randall, 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

RANDALL, Judge

Appellant Miguel Angel Rodriguez challenges his convictions for aggravated robbery, ineligible person in possession of a firearm, and second-degree assault, arguing that the district court (1) plainly erred by allowing references to be made to his criminal history even though he had stipulated to it, (2) abused its discretion by denying his motion to suppress evidence of a revolver claiming it lacked a chain of custody, and (3) failed to define "danger to public safety" in instructing the jury on an aggravating sentencing factor. We affirm.

FACTS

Just before closing time on December 21, 2013, the Hiawatha Bar in Austin was robbed. Those present included the bartender, the bouncer, a few regular patrons, and Rodriguez and his girlfriend, Melissa Quiroz, who were not regular patrons but had been eating and drinking at the bar for about an hour. During the robbery, Rodriguez fired a shot with a small caliber revolver, and police were able to recover a bullet fragment in the bar wall. Using an offender data base, police later matched DNA samples from a Budweiser can from which Rodriguez had been drinking to Rodriguez's known DNA. The bouncer and bartender strongly identified Rodriguez as the robber from a photographic line-up.

About a month after the robbery, on January 19, 2014, Quiroz's vehicle was stopped on suspicion of impaired driving (DWI) in White Bear Lake. Police found a loaded Smith and Wesson .38 revolver under the front passenger seat where Rodriguez had been sitting.

When the revolver was taken into custody, the serial number was incorrectly recorded as 242935 rather than 242985. After resolution of the DWI case, the revolver was broken down for destruction and placed in a large storage barrel that contained other weapons to be destroyed.

When Austin police learned of the existence of the revolver found in Quiroz's car, Detective Mark Haider drove to White Bear Lake. Detective Haider found parts from only one .38 revolver in the storage barrel and sent them to the Bureau of Criminal Apprehension (BCA) for test firing.[1] BCA tests revealed that the bullet fragment recovered from the wall of the Hiawatha Bar matched the revolver recovered from Quiroz's car.[2]

Before Rodriguez's trial on charges of first-degree aggravated robbery, ineligible person in possession of a firearm, and second-degree assault, the district court denied Rodriguez's motion to suppress evidence of the disassembled Smith and Wesson revolver for lack of chain of custody. Rodriguez was convicted of all charges, and in a separate proceeding the jury separately found him a danger to public safety. The district court imposed a 162-month sentence for the aggravated-robbery offense, an upward durational departure, and a 60-month concurrent sentence on the offense of ineligible person in possession of a firearm.

This appeal followed.

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[1] When sent to the BCA lab, the revolver was inoperable because "[i]t was missing a strain screw, as well as three side plate screws, and the grips were missing." The BCA added those parts to make the revolver operable for testing purposes.

[2] When asked on cross-examination about the discrepancy in the handgun's serial numbers, Detective Haider said, "even if it had an inconsistent serial number, the slug [found in the bar wall] is the proof."

D E C I S I O N

I.

At the beginning of the second day of trial, Rodriguez stipulated to having prior felonies. The district court told him that if he stipulated to the prior felonies, "the State [would] not offer evidence of what those priors were and the jury would not hear that evidence." Rodriguez then argues that the district court plainly erred by allowing references to be made to his criminal history despite his stipulating to that fact.

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "A defendant appealing the admission of evidence has the burden to show the admission was both erroneous and prejudicial." *State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009). When a defendant fails to object to the admission of evidence, an appellate court applies the plain-error standard. Minn. R. Crim. P. 31.02. This standard involves consideration of three factors: (1) whether there is an error, (2) whether such error is plain, and (3) whether it affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "An error is plain if it is 'clear' or 'obvious.'" *State v. Milton*, 821 N.W.2d 789, 807 (Minn. 2012). The third prong of the test "is satisfied if the error was prejudicial and affected the outcome of the case;" this is a "heavy burden." *Griller*, 583 N.W.2d at 741. If the three prongs are established, we must consider whether the error seriously affected the fairness and integrity of the judicial proceedings. *Id*. at 740.

Rodriguez asserts that the district court plainly erred by informing the jury in its preliminary instructions that Rodriguez was charged with "Count 2, Ineligible Person in Possession of a Firearm-Crime of Violence." But, this statement occurred on the first day of trial, before Rodriguez's stipulation, and was an accurate description of the charged offense. It was not error for the district court to make this statement. *See State v. Hinton*, 702 N.W.2d 278, 281 (Minn. App. 2005) (noting that "[a] defendant may agree to waive a jury determination of a particular element of the offense by stipulating to it"), *review denied* (Minn. Oct. 26, 2005).

Rodriguez also claims that it was plain error for two of the state's witnesses to reference the fact that he was in the state's "offender database." We disagree. "[I]n a prosecution for being a felon in possession of a weapon the defendant should be permitted to remove the issue of whether he is a convicted felon by stipulating to that fact." *State v. Davidson*, 351 N.W.2d 8, 11 (Minn. 1984). While a defendant charged with a felon-in-possession offense is permitted to stipulate to being a convicted felon, "where the probative value of the evidence outweighs its potential for unfair prejudice, the evidence may be admitted," such as "where the facts underlying the prior conviction are relevant to some disputed issue." *Id.* at 11; *see Old Chief v. United States*, 519 U.S. 172, 186-87, 117 S. Ct. 644, 653 (1997) (recognizing that under general circumstances "the prosecution is entitled to prove its case by evidence of its own choice, or, . . . that a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the government chooses to present it").

During Detective Haider's testimony about how DNA evidence from one of the Budweiser cans linked Rodriguez to the Hiawatha Bar, he testified that the BCA has "a database of people that have been convicted of felonies. They take DNA samples from those people. They did the DNA extraction. They ran it through their database, and they came up with a match to Mr. Miguel Rodriguez." Likewise, BCA witness Adam Bazama testified about how he interpreted Rodriguez's current DNA sample by comparing it to DNA profiles in the database, and the sample "associated to a known sample from Miguel Rodriguez." The references to Rodriguez's prior convictions during witness testimony about DNA evidence was relevant to all of the charged offenses and key to proving identity in this case. The evidence was used to establish the context for how the DNA evidence linked Rodriguez to the crime, and without it, the state lacked foundation for using the DNA evidence. Any prejudice to Rodriguez from the limited reference to his prior convictions in this context was outweighed by its probative value. *See* Minn. R. Evid. 403. Any prejudice was not exaggerated because the jury was not informed of the underlying facts regarding the prior convictions, one of which was for intentional murder.

Finally, Rodriguez argues that during its jury instructions on the charge of ineligible person in possession of a firearm, the district court plainly erred by instructing the jury on each element of the offense, including that it needed to find that "the Defendant has been convicted of a crime making him ineligible to possess a firearm. The Court has determined that the Defendant has been convicted of a crime making him ineligible to possess a firearm." But under *Davidson*, when a defendant is charged with a felon-in-possession offense and stipulates to having a prior conviction, the district court should instruct the jury

that the defendant stipulated to that element of the felon-in-possession offense "and that therefore the jury should direct its attention to the issue of whether or not the state had established . . . that he possessed the pistol, either actually or constructively." 351 N.W.2d at 12. While the instruction given in this case was less directive than the instruction suggested by *Davidson*, it was not inaccurate because it had the same effect: the element of whether Rodriguez had a prior felony conviction was removed from the jury's consideration.

Even if the district court erred by allowing the references to Rodriguez's prior convictions or erred by instructing the jury on the effect of his stipulation to his prior convictions, those errors do not affect Rodriguez's substantial rights. Two witnesses identified Rodriguez from a photographic lineup as the person who robbed the bar, and forensic evidence, including DNA and ballistics evidence, directly linked him to the crimes. As in *Davidson*, any prejudice resulting from the references to Rodriguez's prior convictions during his trial did not affect the outcome. 351 N.W.2d at 12 (ruling that trial reference to the defendant's prior convictions after the defendant had stipulated to them was error, but "not so prejudicial as to require reversal").

II.

Rodriguez argues that the district court abused its discretion by denying his motion to suppress the revolver found in the storage barrel because the White Bear Lake police could not show its chain of custody.

> The chain of custody rule requires the prosecution to account for the whereabouts of physical evidence connected with a crime from the time of its seizure to its offer at trial. The

> rule does not create a rigid formulation of what showing is necessary in order for a particular item of evidence to be admissible. Rather, it requires the district court to be satisfied that, in all reasonable probability, the item offered is the same as the item seized and is substantially unchanged in condition. A chain-of-custody procedure is essential when common items such as drugs are involved. All possibility of alteration, substitution, or change of condition need not be eliminated in laying a chain-of-custody foundation, but the more authentication is genuinely in issue, and the more susceptible the item is to alteration, substitution, or change of condition, the greater the need to negate such possibilities.

State v. Farah, 855 N.W.2d 317, 321-22 (Minn. App. 2014) (quotations and citations omitted), *review denied* (Minn. Dec. 30, 2014). "[W]hen the object of real evidence is unique and thus identifiable in court based on its distinctive appearance, a chain of custody is not needed." *State v. Bellikka*, 490 N.W.2d 660, 663 (Minn. App. 1992), *review denied* (Minn. Nov. 25, 1992). The determination of whether the chain of custody is satisfied "must be left to the sound discretion of the [district court] judge." *State v. Johnson*, 307 Minn. 501, 504, 239 N.W.2d 239, 242 (1976).

The ballistics evidence was sufficient to establish that the revolver used in the robbery was the same revolver that was later confiscated from Quiroz's vehicle. A forensic scientist testified that when she microscopically examined the bullet fragment found in the bar wall and compared it to three test bullets fired from the reassembled revolver, she concluded that "the submitted revolver did fire the bullet fragment."[3] The unique features

[3] The scientist explained that land and groove impressions are made by a bullet as it travels down the rifled barrel of a firearm. Some are created by imperfections in the manufacturing process of the firearm, and others are caused by "any subsequent use, abuse, corrosion, or damage that happens to that firearm during its lifetime." These individual characteristics

of the land and groove impressions made to bullets by the firing of that revolver were sufficient to allay concerns about either the discrepancy in the revolver's serial numbers or the fact that the revolver had been stored in a barrel with other disassembled guns. This testimony was sufficient to establish that although the revolver had been disassembled, the firing mechanism remained intact and unaltered because it produced individual characteristics unique to that revolver. *See Bellikka*, 490 N.W.2d at 663 (ruling that tinted and patterned glass fragments found on the floor of burglary site and on the burglar's clothing were sufficiently unique so that "a chain of custody was not required to authenticate the evidence").

III.

Rodriguez argues that his sentence must be vacated because the district court erroneously instructed the jury on the aggravating factor of whether he was a danger to public safety. A jury instruction is erroneous "if it materially misstates the law." *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005). This court reviews jury instructions "in their entirety to determine whether they fairly and adequately explained the law of the case." *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). When the defendant does not object to a given instruction, it is reviewed under the plain-error standard. *State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017). If any of the plain-error factors are not met, a reviewing court "need not consider the others." *Id*. at *3.

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allow a microscopic comparison of a fired bullet and a firearm, so that a determination can be made that a particular firearm fired a particular bullet.

Under Minn. Stat. § 609.1095, subd. 2 (2012), if a person is convicted of a felony-level violent crime and the judge imposes an executed sentence, the judge may impose an upward durational departure from the presumptive sentence if the offender was at least 18 years of age and, among other factors, "the fact finder determines that the offender is a danger to public safety." The statute further provides that the determination of whether an offender is a danger to public safety may be based on "the offender's past criminal behavior, such as the offender's high frequency rate of criminal activity or juvenile adjudications;" or "the fact that the present offense . . . involved an aggravating factor that would justify a durational departure under the Sentencing Guidelines." *Id.*

The district court instructed the jury as follows:

> The law provides for a separate proceeding when a defendant has been found guilty of a crime. At this proceeding, you'll consider whether an aggravating factor exists. It'll be put to you in the form of a question that will appear on the verdict form. The question is: Is Mr. Rodriguez a danger to public safety? Your answer will assist the Court in determining the Defendant's sentence.

Rodriguez argues that the district court should have further instructed the jury regarding the meaning of "danger to public safety" consistent with the full language of the statute.

Even if the district court had defined "danger to public safety" with reference to all of the language of the statute, the jury could reasonably have found that Rodriguez was a danger to public safety on the facts presented. Rodriguez has felony-level convictions for intentional murder and possession or use of a firearm. He has spent a significant amount of time in prison for those and other offenses since 1991; the longest period that he was not

incarcerated from 1991 to 2016 is two-and-a-half years. For this reason, any claimed error in the instructions did not affect Rodriguez's substantial rights.[4]

We find no plain error in the district court's failure to define the phrase "danger to public safety" in its jury instructions.

Affirmed.

[4] We note that in an unpublished decision, this court ruled that "it was not plain error for the district court to charge [a] jury without defining the phrase 'danger to public safety.'" *State v. Hobbs*, No. A05-248, 2007 WL 1247173, at *4 (Minn. App. May 1, 2007).