STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0504

State of Minnesota,
Respondent,

vs.

John Melvin Karnes,
Appellant.

Filed February 10, 2020
Affirmed
Smith, Tracy M., Judge

Mower County District Court
File No. 50-CR-17-2120

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Thomas C. Baudler, Austin City Attorney, Austin, Minnesota (for respondent)

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

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

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

SMITH, TRACY M., Judge

In this direct appeal, appellant John Melvin Karnes argues that his convictions for fifth-degree assault and careless driving must be reversed and a new trial granted because the district court erred by (1) allowing the victim to testify about the underlying facts of

the victim's prior convictions and (2) limiting appellant's cross-examination of the victim about the underlying facts of his prior convictions. We affirm.

FACTS

On September 27, 2017, the state charged Karnes with one count of fifth-degree assault, two counts of disorderly conduct, and one count of careless driving arising out of a road-rage incident on September 25, 2017. The victim of the road-rage incident, N.M., reported that Karnes cut in front of him as N.M. was slowing down at a stoplight, forcing N.M. to slam on his breaks to avoid a collision. N.M. then honked his horn and threw his hands in the air. Karnes, after unsuccessfully attempting to get N.M. to pull over, followed N.M. to his house. Karnes exited his vehicle, approached N.M., began yelling and cursing at him, and then punched him in the face a few times before grabbing his neck, throwing him to the ground, and continuing to punch him. N.M.'s girlfriend, M.H., was present and yelled at Karnes to stop. The incident ended when M.H. and N.M. called the police and Karnes fled before the officer arrived.

At a pretrial hearing on March 9, 2018, Karnes announced that he wished to discharge his public defender and proceed to trial pro se. After questioning Karnes and reviewing his rights with him, the district court granted this request and assigned Karnes advisory counsel to assist him with the trial.

At trial, the state called three witnesses: N.M., M.H., and the officer who responded to the 911 call and investigated the case. Before N.M. testified, Karnes informed the district court that he wished to question N.M. about N.M.'s prior convictions, which were for

fourth-degree assault and violations of a harassment restraining order. The state did not object, stating that it planned to ask N.M. about the convictions on direct examination.

N.M. testified consistently with what he had reported to the police. He explained that on September 25, 2017, at around 2:00 p.m., he was driving his truck with M.H. in the passenger's seat. They were coming into Austin on Highway 218 and turned onto 14th Street. As N.M. was slowing down to stop at a red light, Karnes suddenly came up in the lane to his right and pulled in front of him without signaling. N.M. estimated that there was a distance of about a car length and a half between him and the intersection when Karnes made this maneuver. N.M. slammed on his brakes to avoid a collision, pressing them so hard that his vehicle's anti-lock braking system engaged and his seatbelt locked up. N.M. then honked, threw his hands up in the air, and said something like, "What the h-ll?" When the light turned green, Karnes put his hand out the window and gestured for N.M. to turn left. N.M. testified that he was turning left anyway because that was the way to his house but that, when he turned left, Karnes—still ahead of him at this point—pulled over, threw open his door, and jumped out of his vehicle. N.M. had to swerve to avoid hitting him.

As N.M. continued home, he and M.H. noticed that Karnes was following them. When they pulled into their driveway, they saw Karnes stop in front of their neighbor's house. N.M. told M.H. to go inside. Karnes then approached N.M., yelling and appearing angry. N.M. told Karnes something like, "Dude, you don't really want to take this this far," and Karnes then swung at him, hitting him in the face. Karnes then swung again, put N.M. in a headlock, threw him to the ground, and began punching him while N.M. shielded his face with his arms. M.H., who was on the steps of their home, came over and yelled at

Karnes to stop. Karnes got up and yelled at M.H. to stay out of it, calling her a "b-tch." N.M. asked M.H. for her phone, saying he was going to call the police. Karnes then began pleading with them not to call the police, but N.M. made the call and Karnes left. N.M. testified that he had never met Karnes before. He gave Karnes's license-plate number to the police officer, who located Karnes the next day.

After N.M. described the incident, the state asked him about his prior convictions. N.M., who was 26 years old at the time of trial, explained that he was convicted of fourth-degree assault when he was in high school, based on an encounter with a school liaison officer shortly after his 18th birthday. He explained that, after an argument with the liaison officer, the liaison officer grabbed him by the shirt and N.M. "ended up reacting and swinging at him" and "connect[ing]." The state asked if N.M. has had any "assaultive behavior charges" since he was 18, and N.M. replied that he has not. When the state asked if he attributes this to anything, N.M. explained that, after the incident with the liaison officer, he discussed the medication that he was prescribed with his doctor and they determined that it was causing him to "react[] in such a bad way," and the doctor took him off of it. He testified he is not on any medications now. The state then asked N.M. about his harassment restraining order violations. N.M. explained that he and M.H. have been dating since 2008, and, after the incident with the liaison officer in or around 2010, M.H.'s mother petitioned for a harassment restraining order (HRO) on M.H.'s behalf and was able

to obtain it over M.H.'s objection because M.H. was a juvenile. N.M. was then charged with violating it after he and M.H. chose to meet up.[1]

On cross-examination, Karnes sought to delve deeper into the details of N.M.'s prior convictions, mental condition, and medical diagnoses. He asked N.M. what medication he was on at the time of the incident with the liaison officer, and N.M. replied that it was Risperidone. Karnes asked if N.M. "refuse[s] to take it," and N.M. explained that he and his doctor agreed that his reaction to it was bad and that he had accordingly been off of medication for years. Karnes then asked what diagnosis N.M. had, and the state objected.

At a bench conference, the district court asked Karnes to explain how N.M.'s diagnosis from high school was relevant to the case, and Karnes explained that N.M. had "opened the door" to this testimony and that he wanted to call a doctor to testify about N.M.'s mental-health condition. After some additional arguments, the district court stated it would allow Karnes to ask N.M. what his diagnosis was but that it was "not going to give [him] a lot of latitude" and was not going to grant a recess to subpoena a doctor, cautioning Karnes that he was "skating on thin ice as far as relevance goes." After further protest from Karnes, the district court instructed him that he could ask N.M. what the mental-health condition was and whether he is still prescribed anything but that nothing beyond that was relevant.

N.M. then testified that his diagnoses in high school were "ADHD" and "ADD." Karnes asked if ADHD and ADD involve "violent mood-swings," and N.M. replied that

[1] When M.H. testified, she gave the same account when Karnes cross-examined her about it, explaining that she was against the HRO.

they do not but clarified that the medication he was prescribed for them had caused mood swings, which is why he went off of it. On redirect examination, N.M. further clarified that he had not been prescribed any medication since he was 18 and that his doctor had taken him off the medication. He has not been "under any mental health care or treatment" since that time.

The state's next witness was M.H., and she testified consistently with N.M.'s account of the September 25 events. She testified that when they pulled into their driveway, she exited the truck and walked towards their house but only made it to the front steps before turning back to see Karnes and N.M. on the ground, with Karnes on top of N.M., punching him. She testified that N.M. had not been aggressive towards Karnes, Karnes was the only person yelling, and she never saw N.M. throw any punches.

The final witness was the police officer who investigated the case. The officer testified about responding to N.M. and M.H.'s call, and the state introduced the audio recordings of his interviews with them into evidence. The state also introduced the photographs that the officer took of N.M.'s injuries, his house and yard, and the portion of the lawn where the punching incident occurred. The officer then testified that he located Karnes in a Walmart parking lot the next day, and the state introduced an audio recording of the officer and Karnes discussing the incident. In it, the officer asks Karnes to tell his side of the story. Karnes says that he was driving along when N.M. came "racing up" behind him shaking his fists. Karnes says that he got out of his vehicle when N.M. pulled up at a house and that he approached N.M. in "a polite nice manner," asking him what was going on. Karnes says that N.M. then became "irate" and came at him and that he, Karnes,

felt threatened. Karnes says that they started "kind of fighting" and that, at one point, he did fling N.M. to the ground, but N.M. got right up. Karnes states that he was never yelling or getting aggressive and that he does not know N.M.

Karnes chose not to testify and did not call any witnesses. The jury deliberated for less than an hour before returning guilty verdicts on all counts. At sentencing, the district court set aside Karnes's conviction for count II (disorderly conduct—brawling or fighting), imposed no sentence for count III (disorderly conduct—offensive/abusive/noisy/obscene), and sentenced Karnes to a 90-day stayed sentence on counts I and IV (fifth-degree assault and careless driving) and placed him on probation for one year.

Karnes now appeals.

D E C I S I O N

Karnes argues that errors regarding the admission of testimony about N.M.'s prior convictions requires reversal and a new trial. He makes a two-part challenge to the testimony, arguing that (1) the district court committed reversible error by allowing the state to elicit testimony about the underlying facts of N.M.'s prior convictions and (2) the district court "compounded that error" by not allowing full cross-examination into the underlying facts. We address both arguments in turn.

I. The district court did not commit reversible error by allowing the victim to testify about the facts underlying his prior convictions.

Karnes concedes that he did not object at trial to the evidence on the underlying facts of N.M.'s convictions. Because the appellant did not object, the plain-error standard of review applies. *See State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). Under this

standard, an appellant must show that "(1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). If these three prongs are satisfied, the appellate court may then determine "whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

We note as an initial matter that neither party argues that N.M.'s prior convictions should have been excluded in their entirety. When Karnes informed the district court and the state that he intended to question N.M. about the convictions, the state responded that it would ask N.M. about these convictions during direct examination.

A. There was no plain error.

"An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted).

As a general rule, "when a witness is the *defendant* in a criminal proceeding, cross-examination as to the witness's prior convictions may ordinarily extend only to the fact of conviction, the nature of the offense, and the identity of the defendant." *State v. Griese*, 565 N.W.2d 419, 426 (Minn. 1997) (emphasis added). This is because, "[i]n such cases, there is a unique possibility of prejudice: to allow broad inquiry into the facts underlying a prior conviction might confuse the issues before the jury or have a chilling effect on the accused's right to testify in his own defense." *Id.*

When the witness is not a criminal defendant, there are different concerns regarding the admission of the witness's prior convictions. As explained by the supreme court in

State v. Lanz-Terry: "When evaluating whether to admit a prior conviction of the defendant or a defense witness, the major concern is to protect the defendant from unfair prejudice." 535 N.W.2d 635, 639 (Minn. 1995). "In contrast, when evaluating whether to admit a prior conviction of a prosecution witness, the major concerns are to protect the witness from being harassed and unduly embarrassed, the jury from being confused and misled, and everyone involved (court, jury, parties) from having to endure an unnecessarily prolonged trial." *Id.* Accordingly, the district court has "wide latitude to impose reasonable limits" on any inquiry into facts underlying a witness's prior convictions. *Id.* And, even when the witness *is* the criminal defendant, the rule against admitting the underlying facts "is not an iron-clad rule," and admission "must be left largely to the discretion of the [district] court." *State v. Valtierra*, 718 N.W. 2d 425, 436 (Minn. 2006) (quotation omitted).

Here, the state questioned N.M. about his prior convictions on direct examination—after Karnes had asserted that he intended to do the same on cross-examination—and asked N.M. to explain the facts underlying the convictions. Karnes did not object. On appeal, Karnes analogizes this case to cases where the facts underlying the *defendant's* prior convictions were admitted. He argues that such cases, like *Valtierra*, highlight "one type of risk" from delving into facts underlying a conviction: "that particularly disturbing facts underlying a [defendant's prior] conviction might inappropriately influence the jury and make it more likely for the jury to convict." But this case, he says, highlights the "opposite" concern: that the explanation of the facts underlying a conviction might paint the witness in "an extremely favorable light."

But the concern when a witness's convictions are at issue is not that the factual details will paint the witness in a favorable light and thereby prejudice the defendant (here, apparently, by dispelling any assumptions that the jury might have made about N.M. if they only heard the nature of his offenses); the concern is with "protect[ing] the witness from being harassed and unduly embarrassed, the jury from being confused and misled, and everyone involved (court, jury, parties) from having to endure an unnecessarily prolonged trial." *Lanz-Terry*, 535 N.W.2d at 639. Given these different concerns, and that any inquiry into the facts of a prior conviction is largely discretionary with the district court, we discern no error—let alone a plain error—here.

B. No substantial rights were affected.

Even if Karnes could show an error and that the error was clear, he would still have to show that the error "affected [his] substantial rights." *Myhre*, 875 N.W.2d at 804. "With respect to the substantial-rights requirement, [the defendant] bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). The court's analysis under this prong "is the equivalent of a harmless error analysis." *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). "In evaluating the reasonable likelihood that the erroneously admitted evidence significantly affected the verdict, this court must consider the persuasiveness of that evidence . . . [and] the manner in which the evidence was presented." *State v. Jackson*, 764 N.W.2d 612, 620 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

Karnes argues that the error affected his substantial rights because the credibility of the witnesses was crucial in this case. He asserts that, if the jury had not heard N.M.'s explanations of his prior convictions, and had merely heard that N.M. had prior convictions for an assault and HRO violations, "the outcome may well have been different." It appears his argument is that, had the jurors not heard about the facts underlying N.M.'s prior convictions, they would have been more inclined to believe that N.M. was the aggressor.

A significant problem with Karnes's argument, though, is that he essentially contends that the jury was prevented from drawing an inference that the Minnesota Rules of Evidence are designed to prohibit. Rule 404 prohibits evidence of "another crime, wrong, or act" to "prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). While couching his argument on appeal in terms of N.M.'s general credibility (citing Minn. R. Evid. 609), at trial, Karnes stated that he wanted to ask N.M. about the conviction to "show . . . that he's an angry man." That the state effectively countered this narrative by having N.M. explain the underlying facts of his high school offenses did not affect Karnes's substantial rights because Karnes never had a right to offer the convictions as character evidence in the first place.

Even if this problem with Karnes's argument were set aside, he has not shown that the testimony about the facts underlying N.M.'s convictions significantly affected the verdict. Here, two eye witnesses testified about the road-rage incident. They both testified consistently with their reports to the investigating officer on the day of the incident. They gave clear, consistent answers to cross-examination questions from Karnes, even though the questions were often compound and confusing. Photographs that the officer took on the

day of the incident showed N.M.'s injuries and the imprint in the grass on his lawn where Karnes threw him down. It was N.M. who called the police, and Karnes, after pleading with him not to call, fled before the officer arrived. The jurors also heard Karnes's audio-recorded statement to the officer, where he claimed that N.M. was the aggressor but also admitted to driving to and getting out of his vehicle at N.M.'s house.

In light of the substantial evidence against him, and given that the error he alleges relates to the witness's conduct from eight years prior that had no connection to Karnes, Karnes has not shown that the absence of the alleged error in admitting the challenged testimony would have had a significant effect on the jury's verdict.

II. The district court did not commit reversible error by limiting appellant's cross-examination of the victim about the victim's prior convictions.

Karnes also argues that, once the facts underlying N.M.'s prior convictions had been admitted, the district court erred by prohibiting Karnes from "fully cross-examining" N.M. about those facts.

"[T]he scope of cross-examination regarding prior convictions must be left largely to the discretion of the [district] court depending upon the circumstances." *Valtierra*, 718 N.W.2d at 436 (quotation omitted). "Based on concerns about such things as harassment, decision making on an improper basis, confusion of the issues, and cross-examination that is repetitive or only marginally relevant, the [district] court possesses wide latitude to impose reasonable limits on cross-examination of a prosecution witness." *Lanz-Terry*, 535 N.W.2d at 639. Moreover, "the extent to which extraneous matters are permitted into a criminal case, either to show the existence or nonexistence of a material fact or to affect

the credibility of a witness as to such fact, rests largely in the discretion of the [district] court." *Id.* at 641.

Karnes argues that the state "opened the door" to the facts underlying N.M.'s prior convictions and then tried to "shut it" when Karnes cross-examined N.M. on those facts. "Opening the door" occurs when one party, by introducing certain material, creates a right for the opposing party to respond with otherwise inadmissible material. *State v. Guzman*, 892 N.W.2d 801, 814 (Minn. 2017). "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." *Valtierra*, 718 N.W.2d at 436 (quotation omitted).

It is unclear what cross-examination questions Karnes believes he should have been allowed to ask N.M. After Karnes asked N.M. what medication he was on at the time of the incident with the liaison officer, and whether he "refuse[s] to take" medication, Karnes asked him what diagnosis he had and the state objected. Following a bench conference, where Karnes requested that he be allowed to call a medical doctor to testify about N.M.'s mental health, the district court instructed Karnes that he could ask N.M. (1) what the mental-health condition was and (2) whether he is still prescribed anything but that nothing beyond that was relevant. N.M. then testified that his diagnoses in high school were ADHD and ADD, that these do not cause violent mood swings, that he has not been prescribed any medications since he was 18, and that he has not been receiving any mental-health care or treatment since then.

On appeal, Karnes essentially suggests that, had he been allowed to ask more questions, he could have woven together a picture of N.M. that made him look more prone to assaultive behavior. He supports this proposition with "evidence" entirely outside the record, including online information about the properties of Risperidone, Register of Actions records with the conditions of N.M.'s probation, and information about the requirements of a specific program included in those probation conditions. We decline to consider any of this "evidence," though, as "[t]he record on appeal consists of the documents filed in the district court, the offered exhibits, and the transcript of the proceedings, if any." Minn. R. Crim. P. 28.02, subd. 8; *see also Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (explaining that an appellate court "generally will not decide issues that were not raised before the district court").

The district court had broad discretion to limit extraneous details about N.M.'s prior convictions. *Lanz-Terry*, 535 N.W.2d at 641. The convictions were from eight years prior and had little to no probative value. Even though the state did "open the door" to some discussion of the underlying facts, this did not give Karnes the unfettered ability to explore N.M.'s mental-health history, which could have confused the issues, invited decision-making on an improper basis, and had marginal relevance, at most. *See id.* at 639. The district court accordingly did not abuse its discretion by limiting the scope of Karnes's cross-examination.

Affirmed.