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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2251**

State of Minnesota,
Respondent,

vs.

Christopher Andrew Boswell,
Appellant.

**Filed November 4, 2013
Affirmed
Bjorkman, Judge**

Mille Lacs County District Court
File No. 48-CR-11-1733

Lori Swanson, Attorney General, Karen Andrews, Assistant Attorney General, St. Paul, Minnesota; and

Jan Jude, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Charles F. Clippert, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of felony domestic assault (fear), arguing that (1) his stipulation as to the prior-convictions element was insufficient and (2) the district

court erred by using the stipulated convictions both to enhance the offense and to calculate his criminal-history score. We affirm.

FACTS

Appellant Christopher Boswell was charged with two counts of felony domestic assault (harm and fear) based on an altercation with his girlfriend, E.S., on August 7, 2011. Before trial, Boswell stipulated to the fact that he has “certain priors” that make the charged offenses felonies. Consequently, Boswell’s trial focused exclusively on whether he committed domestic assault on August 7. The jury acquitted Boswell of domestic assault (harm) but found him guilty of domestic assault (fear). Based on that finding and Boswell’s stipulation, the district court convicted Boswell of felony domestic assault (fear) and sentenced him to 21 months’ imprisonment. This appeal follows.

DECISION

I. Boswell’s stipulation is sufficient to establish that he was convicted of two or more prior qualified domestic violence-related offenses.

A conviction of felony domestic assault requires proof that the defendant committed domestic assault “within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions.” Minn. Stat. § 609.2242, subd. 4 (2010). Boswell contends that his stipulation to “certain priors” is insufficient to establish the prior-convictions element of the felony offense because it does not identify the prior convictions with sufficient specificity.¹

¹ Boswell does not challenge the sufficiency of evidence establishing that he committed domestic assault on August 7, 2011.

We generally review a claim of insufficient evidence by carefully analyzing the record to determine whether the jury could reasonably find the defendant guilty of the offense charged based on the facts in the record and the legitimate inferences that can be drawn from them. *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). But when a defendant stipulates to an element of a crime, he “judicially admit[s] the existence of that element, thereby removing the issue from the case.” *State v. Berkelman*, 355 N.W.2d 394, 397 (Minn. 1984). In this respect, a stipulation to an element of an offense is like a partial guilty plea. *See State v. Kuhlmann*, 806 N.W.2d 844, 850 n.4 (Minn. 2011) (drawing parallel between stipulation to an element of an offense and a guilty plea in discussing validity of jury-trial waiver). Accordingly, a stipulation is factually sufficient if the defendant’s statements establishing the stipulation, viewed in the context of the record at the time of the stipulation, provide sufficient facts to support a conclusion that the element is proved. *Cf. State v. Iverson*, 664 N.W.2d 346, 349 (Minn. 2003) (stating standard for reviewing accuracy of guilty plea); *State v. Trott*, 338 N.W.2d 248, 252 (Minn. 1983) (considering complaint in addition to defendant’s admissions in determining factual basis for guilty plea was sufficient).

The complaint alleged that Boswell has three prior assault convictions: a domestic assault from November 2005, a fourth-degree assault from March 2011, and a fifth-degree assault from October 2010. Boswell told the district court he wanted to stipulate “to the priors” to keep evidence of those offenses from the jury. He declared his understanding that he was charged with felony domestic assault “because [he] ha[s] certain priors that make it a felony.” And he validly waived his right to a jury

determination of the prior-offense element. This record amply establishes that Boswell has the requisite two or more prior qualified domestic violence-related convictions.

Moreover, Boswell acknowledges that any error is not structural error and therefore requires reversal only if it resulted in demonstrable prejudice. *See Kuhlmann*, 806 N.W.2d at 851-52 (holding that failure to obtain defendant's personal jury-trial waiver, like failure to instruct jury on an element of the offense and erroneous judicial determination as to element of offense, is reversible trial error subject to plain-error review). Boswell does not dispute that (1) he actually was convicted of the offenses to which he stipulated, (2) the state had certified copies of the convictions and could have easily proved them at trial, (3) he received a benefit from stipulating to the prior convictions because it kept that information from the jury, and (4) he received a fair trial and was properly found guilty of committing domestic assault. On this record, we conclude the failure to specify which of Boswell's prior domestic violence-related convictions he was stipulating to does not require reversal.

II. The district court did not abuse its discretion in determining Boswell's criminal-history score.

Boswell argues that if his stipulation may be used to establish the requisite prior convictions, those convictions may not be used to increase his criminal-history score. We review the district court's determination of a defendant's criminal-history score for abuse of discretion. *State v. Stillday*, 646 N.W.2d 557, 561 (Minn. App. 2002), *review denied* (Minn. Aug. 20, 2002).

The sentencing guidelines limit the use of prior convictions in calculating a defendant's criminal-history score for an offense that is a felony because of prior convictions:

When determining the criminal history score for a current offense that is a felony solely because the offender has previous convictions for similar or related misdemeanor and gross misdemeanor offenses, prior misdemeanor conviction(s) on the targeted misdemeanor list provided in Minnesota Statutes, section 299C.10, subdivision 1, paragraph (e), or gross misdemeanor conviction(s) upon which the enhancement is based may be used in determining custody status, but the prior misdemeanor and gross misdemeanor conviction(s) cannot be used in calculating the remaining components of the offender's criminal history score.

Minn. Sent. Guidelines 2.B.6 (Supp. 2011). But “[p]rior felony offenses used for enhancement shall always be used in calculating the offender’s criminal history score.”

Id.

Boswell contends that “[w]ithout a clear factual basis to know what [he] stipulated to as prior offenses to enhance the charge to [a] felony, there is no way of knowing what [his] criminal history score should be.” We disagree. First, while Boswell did not identify which of the three prior convictions listed in the complaint he was stipulating to at trial, Boswell’s sentencing worksheet indicates that his March 2011 fourth-degree assault and October 2010 fifth-degree assault “were used to enhance” his current offense. Boswell did not challenge this statement in the worksheet. Second, the worksheet calculates Boswell’s criminal-history score based on four misdemeanor or gross-misdemeanor offenses, excluding the October 2010 fifth-degree assault (1 criminal-

history point); three felony convictions, including the March 2011 fourth-degree assault (2 criminal-history points); and his probationary status (1 criminal-history point). The district court sentenced Boswell based on those 4 criminal-history points. In short, the only prior conviction used to enhance Boswell's domestic assault to a felony and also used in calculating his criminal-history score was a prior felony. The guidelines expressly approve such a calculation. *See* Minn. Sent. Guidelines 2.B.6. Accordingly, we conclude the district court did not abuse its discretion in determining Boswell's criminal-history score.

Affirmed.