STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2262

State of Minnesota,
Respondent,

vs.

Mondrelle Frank Fields,
Appellant.

Filed January 6, 2014
Affirmed
Schellhas, Judge

Ramsey County District Court
File No. 62-CR-11-9040

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Stauber, Judge; and Crippen, 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

SCHELLHAS, Judge

Appellant challenges his felony conviction of violating an order for protection, arguing that (1) the district court erred by admitting relationship evidence and (2) a plainly erroneous jury instruction requires reversal. We affirm.

FACTS

On July 28, 2011, the district court granted K.C. and her then-13-year-old daughter an ex parte order for protection (OFP), ordering appellant Mondrelle Fields to, among other things, "not have any contact with [K.C.] or [her daughter]"[1] or "do anything to cause fear of physical harm, injury, or assault." A Ramsey County deputy sheriff personally served Fields with the OFP on July 28, 2011. Respondent State of Minnesota charged Fields under Minn. Stat. § 518B.01, subd. 14(a) and (d)(1) (2010), with violating the OFP on August 11, 2011.

Before trial, Fields stipulated to the existence of "two prior . . . domestic-assault-related convictions" from 2005 and 2009. The state noticed its intent to introduce, and moved the district court to admit, relationship evidence under Minn. Stat. § 634.20 (2010). The court granted the motion in part, permitting the state to "establish the history of the relationship to the extent it doesn't get into convictions and prior matters." To prevent the state from introducing "statements . . . in the Order for Protection," Fields implicitly offered to stipulate to the existence of the OFP and his knowledge of it. The

[1] The OFP did not cover K.C.'s two sons.

court implicitly declined to accept Fields's stipulation, noting that to do so would abrogate its earlier decision to permit the state to introduce relationship evidence.

K.C. and her son testified about Fields's abusive behavior toward K.C., and the district court admitted K.C.'s supporting OFP affidavit that contained descriptions of Fields's past abuse of her. The court also admitted a recording of two of K.C.'s 911 calls, and the state played the recording for the jury.

Fields again asked the district court to accept his stipulation that he knew of the existence of the OFP and that he had been served with it, and the court accepted the stipulation. Fields also moved for dismissal of the OFP-violation charge, arguing that the evidence was insufficient to support the charge. The court denied his motion.

Fields called two women to testify as alibi witnesses, his girlfriend and a woman previously employed by KinderCare, who allegedly saw Fields with his girlfriend at KinderCare on August 11, 2011. The KinderCare employee confirmed that Fields was the man she saw at KinderCare on August 11 when a police officer showed her Fields's driver's license photo. The jury found Fields guilty of violating the OFP. This appeal follows.

D E C I S I O N

Relationship Evidence

Fields argues that the district court erred by admitting (1) K.C.'s testimony about her relationship with Fields because his alleged OFP violation did not constitute domestic abuse and (2) K.C.'s supporting OFP affidavit because it was irrelevant. "Rulings on evidentiary matters rest within the sound discretion of the trial court, and [an appellate

court] will not reverse such evidentiary rulings absent a clear abuse of discretion." *State v. Goelz*, 743 N.W.2d 249, 254 (Minn. 2007) (quotations omitted); *see State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010) (reviewing admission of relationship evidence under Minn. Stat. § 634.20 (2008) for abuse of discretion).

In *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004), the supreme court "expressly adopt[ed] Minn. Stat. § 634.20 as a rule of evidence for the admission of evidence of similar conduct by the accused against the alleged victim of domestic abuse."[2] The state may offer relationship evidence "to illuminate the history of the relationship" between the accused and the alleged victim, "that is, to put the crime charged in the context of the relationship between the two." *McCoy*, 682 N.W.2d at 159. Minnesota Statutes section 634.20 provides that

> [e]vidence of similar conduct by the accused against the victim of *domestic abuse* . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(Emphasis added.)

K.C.'s Relationship-Evidence Testimony

Fields argues that K.C.'s subject testimony was not admissible under section 634.20 because his alleged OFP violation did not constitute domestic abuse. We apply plain-error review to Fields's argument because he did not raise it in district court. *See State v. Dao Xiong*, 829 N.W.2d 391, 395 (Minn. 2013) ("We apply the plain-error

[2] Effective August 1, 2013, the legislature substituted "domestic conduct" for "domestic abuse" in Minn. Stat. § 634.20. Minn. Stat. § 634.20 (Supp. 2013).

standard of review to claims of unobjected-to error."). Instead, he argued that, by stipulating to the existence of his two prior domestic-assault-related convictions and his knowledge of the OFP, the jury should have been prevented from hearing about the prior incidences and the state should have been limited in presenting evidence about the history of his relationship with K.C. "An objection must be specific as to the grounds for challenge," *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993), and, generally, an attorney who objects to an evidentiary ruling fails to preserve the issue for appeal if the attorney "fails to state the specific ground for that objection . . . unless the ground for the objection is clear from the context of the objection," *State v. Brown*, 792 N.W.2d 815, 820 (Minn. 2011) (construing Minn. R. Evid. 103(a)(1)).

To prevail on plain-error review, "an appellant has the burden of proving (1) an error, (2) that the error is plain, and (3) that the plain error affects substantial rights." *Dao Xiong*, 829 N.W.2d at 395. Whether a district court errs by admitting evidence under the first prong of the plain-error test turns on whether it abused its discretion. *See State v. Hayes*, 826 N.W.2d 799, 808 (Minn. 2013) (declining to "consider the remaining prongs of the plain-error test" after concluding that "the district court did not abuse its discretion in admitting the challenged testimony"); *State v. Jenkins*, 782 N.W.2d 211, 230–31 (Minn. 2010) (concluding in context of plain-error review that "the district court did not abuse its discretion or commit any error when it granted the State's motion to exclude the evidence on relevance grounds").

Whether an alleged OFP violation constitutes domestic abuse under Minn. Stat. § 634.20 turns on whether the conduct comprising the alleged violation is domestic abuse under Minn. Stat. § 518B.01, subd. 2(a) (2010). Section 634.20 provides that "'[d]omestic abuse' . . . [has] the meanings given under section 518B.01, subdivision 2," which, in paragraph (a), defines domestic abuse in the following ways, not expressly including an OFP violation:

> (1) physical harm, bodily injury, or assault;
> (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or
> (3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

In *State v. Barnslater*, we concluded that the defendant's attempt to contact a victim through the victim's friend and his consequent conviction of violation of an OFP did not meet the definition of domestic abuse under section 518B.01. 786 N.W.2d 646, 652 n.1 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010); *see also Goelz*, 743 N.W.2d at 254 (noting, as to domestic-abuse definition under Minn. Stat. § 609.185(c)(1) (2006), that "[t]he State concede[d] that whether an OFP . . . is violated is not conclusive evidence of an incident of domestic abuse"). But we rejected Barnslater's argument that restraining-order violations cannot satisfy the definition of domestic abuse in section 634.20, explaining that "[t]he applicable definition of 'domestic abuse' focuses on the defendant's conduct rather than on a list of offenses that represent 'domestic abuse.'" *Barnslater*, 786 N.W.2d at 651.

K.C. testified that Fields had a history of threats and acts of physical and mental abuse of her that caused her safety concerns and led her to apply for the subject OFP approximately two weeks before the August 11 incident. Based on K.C.'s 911 call during that incident and her testimony, Fields entered K.C.'s home, she asked him to leave, he tried to get the phone from her, she hung up the phone, he grabbed and threw the phone, the 911 operator called back, and K.C. told the operator that she needed help. Domestic abuse includes "the infliction of fear of imminent physical harm, bodily injury, or assault." Minn. Stat. § 518B.01, subd. 2(a)(2). We conclude that the conduct that K.C. described during her testimony constituted domestic abuse and was relationship evidence under section 634.20.

We reject Fields's argument that the district court erred by admitting the relationship evidence because it was not probative and was unfairly prejudicial. "Generally, a defendant's offer to stipulate in a criminal case should not result in limiting the introduction of relevant evidence, particularly where the evidence is relevant to other issues not covered by the stipulation." *State v. Yang*, 774 N.W.2d 539, 555 (Minn. 2009). "Relationship evidence is relevant because it illuminates the history of the relationship between the victim and defendant and may also help prove motive or assist the jury in assessing witness credibility." *Matthews*, 779 N.W.2d at 549 (quotation omitted). "Evidence that helps to establish the relationship between the victim and the defendant or which places the event in context bolsters its probative value." *State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998). Here, both immediately before K.C. provided relationship-evidence testimony and during the district court's final instructions, the court

instructed the jury on the limited purpose of the relationship evidence. *See State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (concluding that district court did not abuse its discretion by admitting section 634.20 relationship evidence when it provided cautionary instructions that "lessened the probability of undue weight being given by the jury to the evidence" (quotation omitted)), *review denied* (Minn. Oct. 29, 2008).

Admission of K.C.'s Supporting OFP Affidavit

Fields argues that the district court abused its discretion by admitting K.C.'s supporting OFP affidavit because it was irrelevant. He argues that he rendered the affidavit irrelevant by offering to stipulate to his knowledge of the OFP before trial. He did not argue in district court that the affidavit did not contain relationship evidence. On appeal, Fields argues that the probative value of the supporting OFP affidavit was outweighed by its unfair prejudice.

"When balancing the probative value against the potential prejudice, unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (applying rule to section 634.20 relationship evidence). *But cf. Goelz*, 743 N.W.2d at 256 (stating that "[t]he evidentiary value of the [OFP] was weak" when "[i]t describe[d] none of [a victim]'s allegations that, if provided, would tend to be probative on [her] veracity").

In *Bell*, in which the defendant Bell appealed a conviction of violation of a no-contact order, the supreme court concluded that the district court did not abuse its discretion by admitting evidence of two prior OFP violations because the evidence was

"probative of a material fact, namely, the history of [the victim] and Bell's relationship" and the court saw "nothing particularly inflammatory or unfairly prejudicial in the evidence." 719 N.W.2d at 637, 641 ("We have on numerous occasions recognized the inherent value of evidence of past acts of violence committed by the same defendant against the same victim." (quotation omitted)). Notably, the evidence that the court did not see as particularly inflammatory or unfairly prejudicial included the victim's testimony that the OFP violations' underlying facts were that (1) Bell "threw a ladder through a window" and "ramm[ed] his truck against the garbage cans of the back porch and against the cement porch of the house" and (2) the victim "came home from work, went to her bedroom, and found that Bell was in her bed[,] . . . had taken money from her," and refused to leave. *Id.* at 638.

We conclude that the district court did not abuse its discretion by admitting K.C.'s supporting OFP affidavit as relationship evidence under section 634.20.

Plainly Erroneous Jury Instruction

Fields did not object to the district court's OFP-violation jury instruction. "Failure to object to jury instructions may result in waiver of the issue on appeal," "[b]ut [an appellate court has] discretion to review instructions not objected to at trial if the instructions contain plain error affecting substantial rights or an error of fundamental law." *State v. Scruggs*, 822 N.W.2d 631, 642 (Minn. 2012) (quotation omitted). An appellate court "will order a new trial only if all three prongs of the plain error standard are satisfied and the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quotation omitted).

Fields argues, and the state concedes, that the district court plainly erred by instructing the jury that a felony OFP violation's mens rea is that the defendant "knew of the existence of the order." We agree.

"[F]ailure to instruct the jury on an element of a crime charged constitutes plain error." *State v. Milton*, 821 N.W.2d 789, 808 (Minn. 2012) (citing *State v. Vance*, 734 N.W.2d 650, 658 (Minn. 2007), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303, 311 (Minn. 2012)). The mens rea for a *felonious* OFP violation is that the defendant "knowingly violates" the OFP; in contrast, the mens rea for a *misdemeanor* OFP violation is that the defendant simply "knows of the existence of the order." Minn. Stat. § 518B.01, subd. 14(a)–(b), (d) (2010). We have previously concluded that a district court similarly plainly erred in the context of felony violations of a harassment restraining order (HRO), *State v. Gunderson*, 812 N.W.2d 156, 160–62 (Minn. App. 2012), and a domestic-abuse no-contact order (DANCO), *State v. Watkins*, 820 N.W.2d 264, 268–69 (Minn. App. 2012), *aff'd on other grounds*, ___ N.W.2d ___, 2013 WL 6252424 (Minn. Dec. 4, 2013). The HRO and DANCO statutes in *Gunderson* and *Watkins*, like the OFP statute here, predicated felony violations on the defendant "knowingly violat[ing]" the order. Minn. Stat. § 518B.01, subd. 14(d) (OFP); Minn. Stat. § 629.75, subd. 2(d) (2010) (DANCO), *cited in Watkins*, 820 N.W.2d at 267; Minn. Stat. § 609.748, subd. 6(d) (2008) (HRO), *cited in Gunderson*, 812 N.W.2d at 160.

We conclude that the district court plainly erred by instructing the jury that a felony OFP violation's mens rea is that the defendant "knew of the existence of the order."

To prevail under the third prong of the plain-error test, the defendant bears the "heavy burden . . . [to] prov[e] that the error was prejudicial" by proving that a "reasonable likelihood [exists] that the error had a significant effect on the jury's verdict." *Milton*, 821 N.W.2d at 809 (quotations omitted). A defendant feloniously violates an OFP by "knowingly violat[ing] [the OFP] . . . within ten years of the first of two or more previous qualified domestic violence-related offense convictions." Minn. Stat. § 518B.01, subd. 14(a), (d)(1). Fields stipulated to having the requisite convictions. To prevail, Fields must satisfy his heavy burden to prove that a reasonable likelihood exists that the verdict would have been different if the jurors had been instructed that they could not find him guilty unless they found that he *knowingly* violated the OFP.

"The word 'knowingly' derives from the word 'know,' which means to perceive directly . . . ." *Watkins*, 2013 WL 6252424, at *6 (quotation omitted). Whether the district court's omission of the knowingly element from its jury instructions is prejudicial depends on "all relevant factors, including whether the defendant contested the omitted element and submitted evidence to support a contrary finding, whether the State submitted overwhelming evidence to prove the omitted element, and whether the jury's verdict nonetheless encompassed a finding on the omitted element." *Id.*, at *1.

Fields presented no evidence or argument at trial that he did not *knowingly* violate the OFP; rather, his sole defense was an alibi defense, based on the alleged eyewitness testimony of his girlfriend and the KinderCare employee, corroborated in part by portions of the police officer's testimony. *See State v. Spencer*, 298 Minn. 456, 463–64, 216 N.W.2d 131, 136 (1974) (declining to reverse aggravated-assault conviction, even though

district court erroneously instructed jury that state did not need to prove intent, reasoning in part that the trial "centered" not on defendant's intent but rather on his identity). No dispute exists that Fields was aware that the OFP prohibited his alleged conduct because he stipulated that he knew of and was served with the OFP. Through the OFP, the district court notified Fields that (1) he "must not physically harm, injure, or assault [K.C.] or [her daughter] or do anything to cause fear of physical harm, injury, or assault"; (2) he "must not have any contact with [K.C.] or [her daughter], whether in person, by telephone, mail, or electronic mail or messaging, through a third party, or by any other means"; (3) he must "STAY AWAY FROM [K.C.]'S RESIDENCE" and "NOT ENTER OR STAY AT [K.C.]'S RESIDENCE FOR ANY REASON, EVEN IF INVITED TO DO SO"; and (4) he must "NOT ENTER WITHIN 2 CITY BLOCKS OR ¼ MILE, WHICHEVER IS GREATER IN ALL DIRECTIONS OF [K.C.]'s RESIDENCE." And the OFP stated that it "will be effective for a period of TWO YEARS from the date of this Order, or until modified or vacated at a hearing."

We conclude that no reasonable likelihood exists that the plainly erroneous mens-rea instruction significantly affected the jury's verdict and therefore conclude that the district court's error does not require reversal of Fields's felony OFP-violation conviction.

Affirmed.