STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0336

State of Minnesota,
Respondent,

vs.

Gary Elmer Teigland,
Appellant.

Filed November 25, 2013
Affirmed
Kalitowski, Judge

Beltrami County District Court
File No. 04-CR-11-1317

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

Timothy R. Faver, Beltrami County Attorney, Annie P. Claesson-Huseby, Chief Assistant County Attorney, Bemidji, Minnesota (for respondent)

Lauren Campoli, The Law Office of Lauren Campoli, P.L.L.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

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

KALITOWSKI, Judge

Appellant Gary Teigland challenges his conviction of felony domestic assault. Appellant argues that: (1) the district court failed to obtain a valid waiver of his right to a

jury trial on the felony-enhancement element of his offense; (2) the district court abused its discretion by allowing his 2003 assault convictions to be admitted as prior relationship evidence under Minn. Stat. § 634.20 (2012); (3) he received ineffective assistance of counsel; and (4) the district court abused its discretion by admitting a video and transcript into evidence where an officer opined on the ultimate issue in the case. We affirm.

D E C I S I O N

I.

To be convicted of felony domestic assault, one must commit misdemeanor domestic assault and have two or more prior domestic-violence-related convictions within the previous ten years. Minn. Stat. § 609.2242, subd. 4 (2012). Appellant argues that his stipulation to the requisite prior-conviction element was not valid, knowing, or intelligent because his stipulation was based on the district court's inaccurate assurances. Appellant argues that in order to obtain his waiver, the district court misled him in two ways. First, the district court erroneously told appellant that he could not present evidence challenging his prior convictions. Second, the district court erroneously told appellant that if he stipulated to having two prior domestic-violence-related convictions, evidence of those convictions would not be seen by the jury. But the district court later allowed evidence of appellant's prior convictions to be introduced as relationship evidence under Minn. Stat. § 634.20.

For any offense punishable by incarceration, a defendant has a constitutional right to a jury trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6; Minn. R. Crim. P. 26.01, subd. 1(1)(a) (2012). This right "includes the right to be tried on each and every element

of the charged offense." *State v. Wright*, 679 N.W.2d 186, 191 (Minn. App. 2004), *review denied* (Minn. June 24, 2004). By stipulating to an element of the offense, the defendant waives his right to a jury trial on that element. *State v. Kuhlmann*, 806 N.W.2d 844, 848 (Minn. 2011). "Because the right to a jury trial is a fundamental right, waiver of this right must be personal, explicit, and in accordance with rule 26.01." *State v. Fluker*, 781 N.W.2d 397, 400 (Minn. App. 2010). Rule 26.01 requires that a defendant's waiver be in writing or on the record in court, after being advised of the right to trial by jury and having an opportunity to consult with counsel. Minn. R. Crim. P. 26.01, subd. 1(2)(a). Whether a defendant properly waived his right to a jury trial under rule 26.01 is a question this court will review de novo. *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *review denied* (Minn. June 18, 2002).

The record here indicates that the requirements of rule 26.01 have been satisfied. Appellant was represented by counsel. Appellant was advised of his right to a jury trial by the district court and had ample opportunity to consult with his attorney. And the record shows that appellant's attorney repeatedly advised him to stipulate that he had two prior domestic-violence-related offenses. Moreover, appellant was personally examined by the state and agreed on the record to stipulate.

> [Prosecutor]: Now, you understand that presumption, not guilty, remains with you until the State proves your guilt beyond a reasonable doubt. You understand that?
> [Appellant]: Yup.
> . . . .
> Q: You understand that each crime has certain element[s]. For example, in this case before you would be convicted, the State would have to prove that you committed an act with intent to cause [V.W.] fear of immediate bodily harm and

> death. We would have to prove that [V.W.] is a member of your family or household and we'd have to prove that you have two prior convictions within 10 years of the act on [V.W.]. Do you understand that?
> A: Yeah.
> Q: Do you understand that we have to prove each of those elements beyond a reasonable doubt?
> A: Yes.
> Q: Do you understand that by agreeing and stipulating that this certified copy of a conviction showing that you have been convicted of domestic assault; two counts of it, misdemeanor domestic assault proves that element? Do you understand that?
> A: Yes.

We conclude that appellant waived his right to a jury trial on the prior-conviction element of his offense.

We reject appellant's argument that the district court erroneously told appellant that he could not explain his prior convictions to the jury. The record shows appellant wanted to collaterally attack his prior convictions. In 2003, appellant, who was represented by counsel, pleaded guilty to domestic assault of B.C. and fifth-degree assault of S.C. The state had a certified copy of those convictions. Appellant asked the district court if he could introduce evidence relating to the mental health of B.C. and contest that he pleaded guilty to assaulting S.C. The district court properly told appellant that he could not collaterally attack his 2003 convictions. *See Bradshaw v. Stumpf*, 545 U.S. 175, 186, 125 S. Ct. 2398, 2407 (2005) (holding that a voluntary and intelligent plea of guilty, made by one who has been advised by competent counsel, may not be collaterally attacked). Thus, we conclude that the district court did not mislead appellant in this regard.

We further reject appellant's argument that the district court committed reversible error by suggesting to appellant that the jury would not learn of his 2003 convictions, even though it later admitted those same convictions as prior relationship evidence. We agree that the district court should not have told appellant that the jury would not learn of his 2003 convictions when it had not yet ruled on the state's motion to admit this evidence under section 634.20. But the subsequent introduction of the same assault convictions appellant stipulated to for the prior-conviction element of his offense does not necessarily invalidate his waiver. *See State v. Berkelman*, 355 N.W.2d 394, 396 (Minn. 1984) (concluding defendants should generally be able to remove a conviction-based element from the jury through stipulation, but leaving open the possibility that such evidence may be admitted on other grounds where the probative value outweighs the danger of unfair prejudice).

Thus, even if the district court erred in obtaining appellant's waiver of the prior-conviction element, we reject appellant's argument that this was structural error requiring automatic reversal. *See Kuhlmann*, 806 N.W.2d at 850. In *Kuhlmann*, the court held that a failure to obtain a personal waiver of a right to a jury trial on the prior-conviction element of an offense is not structural error and therefore does not require automatic reversal. *Id.* at 851-52. And under *Kuhlmann*, we conduct either harmless-error or plain-error review, depending on whether appellant objected to the waiver at trial. *Id.* at 852.

Here, as in *Kuhlmann*, appellant did not object to the waiver at trial. Because appellant did not object, plain-error review applies. *Id.* "To establish plain error, a defendant must show: (1) an error; (2) that is plain; and (3) the error must affect the

defendant's substantial rights." *State v. Scruggs*, 822 N.W.2d 631, 642 (Minn. 2012) (quotation omitted). An error affects substantial rights if the error was prejudicial and affected the outcome of the case. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998).

Under plain-error review, we conclude that appellant's waiver to the previous-conviction element of his offense was not prejudicial and it did not affect the outcome of his case. Appellant stipulated to only one element of his offense and proceeded to a jury trial on the other two elements. *See State v. Kuhlmann*, 780 N.W.2d 401, 405-06 (Minn. App. 2010) *aff'd*, 806 N.W.2d 844 (Minn. 2011) (recognizing the "deeply significant differences between the rights given up by foregoing a jury and agreeing to a bench trial or stipulated-facts trial and the rights given up when exercising the right to a jury trial and stipulating only to an offense element"). And appellant here was able to compel witnesses to testify on his behalf, cross-examine the state's witnesses, challenge the state's evidence, and argue his case to the jury on the remaining elements.

Moreover, appellant suffered less prejudice by stipulating that he had two prior domestic-violence-related convictions. The facts relating to appellant's 2003 convictions were egregious. The 2003 complaint alleged that appellant had hit B.C. with a car, kicked and punched her in the face and ribs, had a loaded shotgun, threatened to kill B.C., and hit 13-year-old S.C. in the head twice. Appellant's stipulation prevented the state from presenting these facts and witnesses from the 2003 assaults in proving the prior-conviction element of appellant's offense. Because appellant has failed to show that stipulating to his prior offenses was prejudicial or that it affected the outcome of his case, we affirm appellant's conviction on this issue.

II.

Appellant contends the district court abused its discretion by admitting certified copies of appellant's 2003 convictions of domestic assault and fifth-degree assault as prior relationship evidence under Minn. Stat. § 634.20. We disagree.

"We review for an abuse of discretion the district court's decision to admit evidence of similar conduct by the defendant against an alleged domestic-abuse victim under Minn. Stat. § 634.20." *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008) (citing *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004)), *review denied* (Minn. Oct. 29, 2008). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003); *see also McCoy*, 682 N.W.2d at 161 (holding that evidence admitted under section 634.20 need not meet the clear-and-convincing standard required for admission of character or *Spreigl* evidence, but need only be more probative than prejudicial).

Generally, evidence of prior crimes or bad acts is not admissible as character evidence to show that the person acted in conformity with that character. Minn. R. Evid. 404(b); *see generally State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). But in domestic violence cases:

> Evidence of similar conduct by the accused against the victim of domestic abuse, or against other family or household members, 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. "Similar conduct"

> includes, but is not limited to, evidence of domestic abuse . . . . "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subdivision 2.

Minn. Stat. § 634.20.

Appellant first argues that evidence of his 2003 convictions should not have been admitted under section 634.20 because those convictions were against B.C. and S.C., who were not the victims of the current offense. We disagree.

Section 634.20 expressly allows the admission of evidence of appellant's similar conduct against "other family or household members." In 2003, B.C. and appellant were in a significant romantic relationship, and S.C. was the child of B.C. As such, B.C. and S.C. qualify as "family or household members" under the statute. *See* Minn. Stat. § 518B.01, subd. 2(b) (2012) (defining "family or household members" to include persons who have resided together in the past and persons involved in a significant romantic or sexual relationship); *see also Sperle v. Orth*, 763 N.W.2d 670, 675 (Minn. App. 2009) (holding that "a former relationship may qualify as a significant romantic or sexual relationship under the Domestic Abuse Act"); *Elmasry v. Verdin*, 727 N.W.2d 163, 164 (Minn. App. 2007) (holding that a person residing in one residence with another may obtain relief under the Domestic Abuse Act despite the absence of a marital, familial, sexual, or romantic relationship). Moreover, section 634.20 has been construed as "unambiguously authorizing the admission of similar-conduct evidence against the accused's (not the victim's) family or household members." *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). Because the

statute and caselaw allow evidence of appellant's prior convictions against B.C. and S.C. to be admitted, the district court did not abuse its discretion.

Alternatively, appellant argues that the district court abused its discretion by failing to consider that the probative value of appellant's 2003 convictions was substantially outweighed by its prejudicial effect. We disagree.

"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. Barnslater*, 786 N.W.2d 646, 652 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Oct. 27, 2010). And "[o]bviously, evidence showing how a defendant treats his family or household members, such as his former spouses or other girlfriends, sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim." *Valentine*, 787 N.W.2d at 637.

Here, evidence of appellant's 2003 convictions was not unfairly prejudicial. Appellant's convictions were presented in a brief and summary fashion. The state admitted copies of an order showing appellant had pleaded guilty to domestic assault and fifth-degree assault. The 2003 complaint, which contained inflammatory details of the prior assaults, was not presented to the jury. Further, any unfair prejudice that may have occurred was avoided when the district court read a limiting instruction to the jury before the evidence was presented.

Because the admission of appellant's 2003 convictions came within the purview of Minn. Stat. § 634.20 and was not unfairly prejudicial to appellant's defense, we conclude the district court did not abuse its discretion.

III.

Appellant argues that he received ineffective assistance of counsel because counsel failed to investigate whether appellant's 2003 fifth-degree assault conviction against S.C. was legitimate, despite knowing the state planned to use this conviction to enhance appellant's charge and that appellant disputed the conviction. We disagree.

"Claims of ineffective assistance of counsel involve mixed questions of law and fact, which we review de novo." *Vance v. State*, 752 N.W.2d 509, 513 (Minn. 2008). "We analyze ineffective assistance of counsel claims under a two-prong test set forth in *Strickland*." *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064-65 (1984)). Under *Strickland*, appellant has the burden of showing that "(1) his counsel's performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that, but for his counsel's unprofessional errors, the result of the proceedings would have been different." *State v. Nissalke*, 801 N.W.2d 82, 111 (Minn. 2011). This is a high threshold. And this court "need not address both the performance and prejudice prongs if one is determinative." *Rhodes*, 657 N.W.2d at 842 (citing *Strickland*, 466 U.S. at 697, 104 S. Ct. 2052).

We conclude defense counsel's decision not to investigate appellant's 2003 conviction did not fall below an objective standard of reasonableness. The extent of any investigation is a part of trial strategy and should not be readily second-guessed. *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). Here, defense counsel was given certified copies of appellant's 2003 convictions. Defense counsel reasonably concluded that a

clerical error did not occur, since the complaint laid out facts indicating an assault occurred against both B.C. and S.C. Moreover, counsel reasonably concluded that any chance to challenge appellant's 2003 convictions would have been futile, as the appeal period had passed. *See* Minn. R. Crim. P. 28.02, subd. (4)(3)(b) (stating a defendant has 30 days after entry of final judgment of misdemeanor to file direct appeal); Minn. Stat. § 590.01, subd. 4 (2012) (requiring a post-conviction petition to be filed no later than two years after the entry of judgment of conviction).

Appellant has also failed to show that but for his counsel's errors, the result of his trial would have been different. Appellant contends that if defense counsel investigated the 2003 convictions a clerical error may have been uncovered. But appellant's counsel has provided no evidence that a clerical error exists. Thus, appellant has failed to show that defense counsel's failure to investigate made a difference in the outcome of the trial. We therefore conclude that appellant did not receive ineffective assistance of counsel.

IV.

Finally, appellant argues that the district court abused its discretion by admitting a video and transcript into evidence, which recorded a conversation between the responding officer and the victim, V.W., the night of the offense. Appellant argues that this evidence was improperly admitted because it contained opinion testimony and statements that were highly prejudicial. We disagree.

The admission "of opinion evidence on ultimate issues rests largely in the discretion of the [district] court." *State v. McCarthy*, 259 Minn. 24, 31, 104 N.W.2d 673, 678 (1960). These evidentiary and procedural rulings will generally not be reversed

absent a clear abuse of discretion. *State v. Glaze*, 452 N.W.2d 655, 660 (Minn. 1990). "On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced." *Amos*, 658 N.W.2d at 203.

Appellant does not argue that the entire video and transcript of the officer and V.W.'s conversation should have been excluded. Rather, appellant takes issue with isolated statements the responding officer made to V.W. when responding to her 911 call. Specifically, appellant takes issue with the officer's statements that a domestic assault occurred, that appellant knew better at his age, and that the officer could not believe that V.W. had installed a security system in her home in case her boyfriend became upset.

At trial, defense counsel did not make a proper objection to the video and transcript before it was presented to the jury. Defense counsel had two opportunities before the video played to state its objection. Counsel met with the district court at a pretrial conference the morning before the video played and later at lunch to discuss ongoing evidentiary issues. It was not until the video had played in its entirety that defense counsel objected to the exhibit because it contained improper opinion testimony. A defendant who fails to properly object to the admission of evidence forfeits his right to review unless the admission was plain error. *Griller*, 583 N.W.2d at 740.

We conclude that even if parts of the video and transcript were admitted in error, appellant has failed to show that his substantial rights were affected. The evidence against appellant was strong. An officer testified that when he arrived at V.W.'s home, she was disheveled, her clothes were ripped, and that she said appellant was going to "fricken kill [her]" if she spoke to the police. An employee at the security-system center

who responded to V.W.'s panic alarm also testified that when V.W. called she was crying and asked the center to call the police. Additionally, evidence of two prior domestic incidents between appellant and V.W. were admitted into evidence. In explaining those past incidents, V.W. provided a similar story to the one she presented at trial: that she had overreacted and she did not fear appellant. The fact that the jury chose to believe the state's witnesses over the defense's is a credibility determination that this court will not disturb on appeal. *State v. Hagen*, 382 N.W.2d 556, 559 (Minn. App. 1986). Moreover, any prejudice that may have occurred in admitting this evidence was mitigated when the district court specifically told the jury that any opinions of law enforcement should be ignored.

Because the evidence against appellant was strong and appellant has not shown that the admission of the officer's statements affected the outcome of the trial, we conclude that the district court did not abuse its discretion by allowing the video and transcript into evidence.

Affirmed.