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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1054**

State of Minnesota,
Respondent,

vs.

Michael Dean Grussing,
Appellant.

**Filed June 26, 2017
Affirmed
Peterson, Judge**

Chippewa County District Court
File No. 12-CR-15-575

Lori Swanson, Attorney General, Edwin W. Stockmeyer, III, Assistant Attorney General,
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Cathryn Middlebrook, Chief Appellate Public Defender, Mark D. Nyvold, Special
Assistant Public Defender, Fridley, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of second-degree intentional murder, appellant
argues that the district court abused its discretion when it admitted his prior felony

convictions as impeachment evidence under Minn. R. Evid. 609(1). Because any error in admitting the prior convictions was not prejudicial, we affirm.

FACTS

C.A. and her friend, B.Z., were in C.A.'s front yard recording snapchat videos. K.R. walked by and went into an apartment at 721 Sherman Avenue. When K.R. entered the apartment, C.A. and B.Z. heard a loud argument. About five minutes later, K.R. came back outside, holding his neck, bleeding, and screaming. K.R. was pursued by a man holding a knife. C.A. and B.Z. went inside and called 911. Officers were dispatched at 5:46 p.m. and arrived at the scene within about two minutes.

K.R. went to another apartment in the building at 721 Sherman and knocked on the door, but no one answered. K.R. ran down the middle of Eighth Street, waving his arms in the air, and a passing pick-up truck stopped. The driver, who knew K.R., brought him to the hospital. K.R. had blood on his shirt and said that he had been stabbed. K.R. died shortly after arriving at the hospital.

The medical examiner testified that K.R. had a 6.5-inch horizontal incised wound on his neck with a 1.75-inch vertical gaping portion. K.R. had no other injuries to his body. On the left side of his neck, the muscles were cut all the way through. Although the medical examiner could not determine the amount of force used, she testified that the incision would have required some force and effort.

Montevideo Police Officer Joshua Walker responded to the 911 call. As he approached the intersection of Sherman Avenue and Seventh Street, he saw a man, later identified as appellant Michael Dean Grussing, who took off running when he saw the

squad car. Walker found Grussing hiding between a bush and a staircase. Walker drew his Taser, ordered Grussing to come out of his hiding place, and handcuffed him.

Walker searched Grussing but did not find a knife. Walker instructed Officer Charles Beery, who had come to assist, to search for a knife along the route that Grussing followed when he fled. About then, Grussing said, “[H]e got his face stabbed; maybe he did.” Walker said that he needed to find the knife because he did not want children to get it, and Grussing said that he could take the officers right to it and that it was inside the apartment. As they approached K.R.’s apartment, Grussing said: “I stabbed it into his throat. . . . I stabbed it into his throat. . . . See all the blood?” Grussing was referring to blood on the staircase, which Walker described as a significant amount of blood. Inside the apartment, Grussing directed Walker to a fillet knife with a black handle on the armrest of a couch. K.B., who was in the apartment when the officers and Grussing arrived, asked Grussing what had happened, and Grussing responded, “I stabbed [K.R.] . . . I stabbed him in his throat.”

After repeatedly asking if K.R. was dead, Grussing said: “I hope he is. I slit . . . his throat. I did. I slit his throat. That’s all I have to say about it, I slit his throat, . . . I hope he dies.” At the jail, Grussing said: “I killed him! . . . You guys, I did it. My name’s Mike, I did it.” He also asked, “Did I murder him?” Although Grussing was not injured, blood was found on his clothing and shoes.

Grussing was charged with second-degree murder in violation of Minn. Stat. § 609.19, subd. 1(1) (Supp. 2015). The case was tried to a jury. Over objection at trial,

the district court admitted evidence of Grussing's three prior felony convictions as impeachment evidence.

Two of Grussing's fellow jail detainees testified about statements that Grussing made while in custody awaiting trial. T.G. testified that Grussing said that he killed K.R. by cutting his throat with a fillet knife. T.G. and Grussing talked about the murder "[w]ell over ten different times." Grussing did not show remorse and was usually laughing when he talked about the murder.

R.G. testified that Grussing said that he killed K.R. and that K.R. was dead at 5:30. Grussing said that he used a knife to give K.R. "an extra smile." When talking about the murder, Grussing showed no remorse and "was just really happy go lucky."

The jury found Grussing guilty as charged. This appeal followed sentencing.

D E C I S I O N

We need not decide whether the district court erred in admitting the prior convictions because, to obtain a new trial based on an erroneous evidentiary ruling, the appellant must show both that the district court erred and that the error was prejudicial. *State v. Griffin*, 846 N.W.2d 93, 103 (Minn. App. 2014), *review denied* (Minn. Aug. 5, 2014). Even if the district court erred in admitting the prior convictions, Grussing has failed to show that the error was prejudicial.

An error is prejudicial if a reasonable possibility exists "that the evidence significantly affected the verdict," or, as otherwise stated, a reasonable possibility exists "that the verdict might have been more favorable to the defendant without the evidence." *Id.* "To determine whether the error warrants a new trial, we consider the manner in which

the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it.” *Id.* (quotation omitted). Although the court cannot focus only on evidence of guilt, overwhelming evidence of guilt is often a very important factor when determining whether the erroneous admission of evidence was prejudicial. *Townsend v. State*, 646 N.W.2d 218, 224 (Minn. 2002) (applying harmless-beyond-a-reasonable-doubt standard).

The only disputed issues in the case were intent and self-defense, and Grussing’s numerous statements to police officers and others showed that he intentionally slit K.R.’s throat and contradicted his claim of self-defense. Grussing repeatedly told the officers who responded to the 911 call and K.B. that he stabbed K.R. in the throat and slit K.R.’s throat. He then said that he hoped K.R. died. At the jail, Grussing asked if he murdered K.R. and bragged about killing him. Grussing talked to one jail detainee about the murder more than ten times, saying that he killed K.R. by cutting his throat with a fillet knife. Grussing told another jail detainee that K.R. was dead at 5:30 and that he used a knife to give K.R. “an extra smile.” With both detainees, Grussing showed no remorse and acted happy about the murder.

Grussing’s actions after the stabbing are also contrary to his self-defense claim in that he did not attempt to assist K.R. Although Grussing claimed that he tried to call 911 but the phone did not work, C.A. and B.Z. saw him holding a knife and pursuing K.R. See *State v. Roy*, 408 N.W.2d 168, 171-72 (Minn. App. 1987) (concluding that defendant’s actions after offense were relevant to state of mind), *review denied* (Minn. July 22, 1987).

The jury's verdict was also supported by forensic evidence. Grussing was not injured, and K.R. had no defensive injuries. On the left side of K.R.'s neck, the muscles were cut all the way through, which required some force and effort by Grussing.

In addition to the overwhelming evidence of guilt, other factors indicate that any error in admitting the prior convictions was harmless. Admitting the prior convictions did not prevent Grussing from testifying. *See State v. Davis*, 735 N.W.2d 674, 680-81 (Minn. 2007) (noting that admission of prior convictions did not prevent defendant from testifying, thereby reducing potential prejudice). Grussing testified that he was convicted of felony offenses in 2006 and 2008 and of failure to register as a predatory offender/providing false information in 2005. Immediately after Grussing testified about the prior convictions, the district court instructed the jury that the evidence could only be used in assessing Grussing's credibility and not as evidence of character or conduct. *See Griffin*, 846 N.W.2d at 104-05 (concluding that any error in admitting evidence of prior convictions was not prejudicial when defense counsel did not draw attention to the fact that one felony was unspecified and two were specified, the state did not specifically inquire about the prior convictions during cross-examination or refer to them in closing argument, and the district court gave a limiting instruction); *see also State v. Ridley*, 776 N.W.2d 419, 428 (Minn. 2009) (stating that a jury is presumed to follow a court's cautionary instruction). Also, the evidence of the prior convictions was not highlighted, the district court sustained an objection to a cross-examination question about the county where the failure-to-register/providing-false-information occurred, and the prosecutor briefly mentioned during

closing argument that the jury could consider the prior convictions in determining Grussing's credibility.

We conclude that no reasonable possibility exists that the evidence of Grussing's prior felony convictions significantly affected the jury's verdict.

Grussing argues that the more stringent harmless-beyond-a-reasonable-doubt standard should be applied to evaluate prejudice. "When [an evidentiary] error implicates a constitutional right, a new trial is required unless the State can show beyond a reasonable doubt that the error was harmless." *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). Grussing's argument that the admission of the prior convictions violated his constitutional due-process right to a fair trial is not persuasive. *Cf. State v. Swinger*, 800 N.W.2d 833, 838 (Minn. App. 2011) (applying reasonable-possibility standard to erroneous admission of prior convictions).

Affirmed.