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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1055**

State of Minnesota,
Respondent,

vs.

Shannon Michael Benson,
Appellant.

**Filed May 30, 2017
Affirmed
Reilly, Judge**

Meeker County District Court
File No. 47-CR-15-488

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges his felony domestic assault (harm) conviction on the ground
that the district court plainly erred by admitting evidence of a prior domestic conduct
incident under Minnesota Statutes section 634.20 (2014) because the evidence contained

reference to appellant's assault of an individual who was not a family or household member under Minnesota Statutes section 518B.01, subdivision 2(b) (2014). Assuming without deciding that there was an error and that the error was plain, we conclude that appellant has not established that his substantial rights were affected under the three-pronged plain-error test and we therefore affirm.

D E C I S I O N

This appeal arises out of appellant Shannon Michael Benson's conviction of felony domestic assault (harm) against his wife, K.B. At appellant's jury trial, the state presented evidence that during the course of an argument in their apartment, appellant chased K.B. into the bathroom, pushed her to the floor, threatened to kill her, bit her, and choked her until she had difficulty breathing. During trial, the district court permitted the state to introduce section 634.20 relationship evidence of two prior convictions of qualified domestic violence-related offenses, without objection or redaction. The jury convicted appellant of domestic assault (harm), and the district court imposed a sentence of 28 months in prison.

The state's relationship evidence included a complaint and a guilty-plea petition to prove appellant's May 2010 conviction of violating a domestic abuse no-contact order (DANCO) against his then-wife, B.J.L.F. The complaint alleges that appellant confronted B.J.L.F. while she was walking with a male friend, W.L.S. The complaint also alleges that appellant got into a "verbal argument" with W.L.S., during which appellant "told W.L.S. that he was going to get a knife and stab him." The complaint includes charges of a DANCO violation as to K.B. and fifth-degree assault as to W.L.S. The plea petition shows

appellant's plea of guilty to the DANCO violation, and to fifth-degree assault against W.L.S.

Appellant argues that the district court erred in admitting the complaint and the plea petition as evidence of the DANCO violation because the documents referenced appellant's assault of W.L.S., who was neither a family nor a household member, as required for purposes of admitting section 634.20 relationship evidence. See Minn. Stat. §§ 518B.01, subd. 2(b) (defining "[f]amily or household members"), 634.20 (providing that "[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members," may be admissible). Because appellant did not raise this objection at trial, we review the matter for plain error. See *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (explaining that appellate courts have the discretion to consider an unobjected-to error on appeal if it is a plain error affecting substantial rights). Under the plain-error test, appellant must show (1) an error, (2) that was plain, and (3) that affected appellant's "substantial rights." *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). If all three prongs of plain-error review are satisfied, a reviewing court may decide whether to address the error to ensure "fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

If we determine upon review that any one of the three prongs of the plain-error test is not satisfied, we need not address the remaining elements. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011). Here, we conclude that appellant failed to establish that the alleged error affected his substantial rights. "[A]n error affects a defendant's substantial rights if there is a reasonable likelihood that the error had a 'significant effect'

on the verdict.” *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quoting *State v. Sontoya*, 788 N.W.2d 868, 873 (Minn. 2010)). Appellant bears a “heavy burden” of proving prejudice. *State v. Wenthe*, 865 N.W.2d 293, 299 (Minn. 2015), *cert. denied*, 136 S. Ct. 595 (2015) (quotation omitted).

Appellant cannot satisfy this burden. K.B. testified that appellant chased her into the apartment bathroom, pushed her to the ground, bit her, choked her until she had difficulty breathing, and threatened to kill her. The apartment manager and his girlfriend, who lived in the apartment below appellant and K.B., heard K.B. yell for help and scream that appellant was trying to kill her. The apartment manager called 911 and then entered appellant and K.B.’s apartment. Upon entering the apartment, the apartment manager found appellant crouched over K.B. with his hands around her neck. The responding police officers found K.B. sitting on the bathroom floor, unclothed and “distraught,” with bruises and bite marks on her neck that were consistent with the report that appellant choked and bit K.B. The jury found the testimony of these witnesses credible, and we defer to the jury’s credibility determinations. *See State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009) (“[D]etermining the credibility or reliability of a witness lies with the jury alone.”).

The district court further minimized any potential prejudice to appellant by providing a cautionary instruction to the jury prior to the state’s elicitation of the relationship evidence, and again before deliberations. A limiting instruction to the jury mitigates the potential for unfair prejudice, *see State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998), and we assume that jurors follow the district court’s instructions, *State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998). During its case-in-chief, the state

introduced evidence of appellant's prior qualified domestic violence-related offenses, including the DANCO violation through a police officer. Prior to the officer's testimony on this point, the district court instructed the jury:

This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and other household members in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the complaint.

The defendant is not being tried for and may not be convicted of any behavior other than the charged offenses. You are not to convict the defendant on the basis of conduct on [the dates of appellant's prior qualified domestic violence-related offenses]. To do so might result in unjust double punishment.

Following the close of evidence and prior to deliberations, the district court again cautioned the jury:

As I told you . . . at the time th[e relationship] evidence was offered, it was admitted for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and other household members in order to assist you in determining . . . whether the defendant committed these acts with which the defendant is charged in the complaint.

The defendant is not being tried for . . . and may not be convicted of any behavior other than the charged offense. You are not to convict the defendant on the basis of similar conduct [because] [t]o do so might result in unjust double punishment.

The district court's cautionary instructions "lessened the probability of undue weight being given by the jury to the evidence." *State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Oct. 29, 2008).

Given the strength of the state’s evidence as a whole and the presumption that the district court’s cautionary jury instructions reduced any potential prejudice, we conclude that the error, if any, did not affect appellant’s substantial rights. *See, e.g., State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (determining that no relief was warranted where defendant’s substantial rights were not affected, even upon an assumption of plain error); *State v. Spann*, 574 N.W.2d 47, 53 (Minn. 1998) (concluding that district court did not abuse its discretion in denying a mistrial absent a showing that there was a reasonable probability that the outcome of the trial would be different absent a discovery violation). Because appellant’s substantial rights were not affected, we need not consider whether to address the matter to ensure the fairness and integrity of the judicial proceedings. *See State v. Morton*, 701 N.W.2d 225, 234 (Minn. 2005) (“Only if the three prongs of [the plain-error test] are satisfied will we assess whether we should address the error to ensure fairness and the integrity of the judicial proceedings.”).

In sum, we conclude that appellant failed to satisfy the three-pronged plain-error test and the district court did not commit reversible error.

Affirmed.