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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0859**

State of Minnesota,
Respondent,

vs.

Vollie Andre Brown, Jr.,
Appellant.

**Filed April 30, 2018
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-16-6660

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Halbrooks, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction and sentence for first-degree assault, arguing that he is entitled to a new trial because the district court failed to give a limiting instruction, sua sponte, on the proper use of relationship evidence. Because the error in not instructing the jury did not affect appellant's substantial rights, we affirm.

FACTS

Appellant Vollie Andre Brown, Jr., and the victim, V.M., are cousins. Appellant lived in a house owned by his grandmother, who rented out rooms. Appellant shared one room with his girlfriend, and his aunt, V.M.'s mother, rented another room.

On the night of March 5, 2016, V.M. went to the house to borrow money from his mother, who was not at home. V.M. and his friend, T.S., waited for V.M.'s mother in the basement, drinking, smoking marijuana, and "having a good time." Appellant and his girlfriend were upstairs sleeping.

Later in the evening, appellant came downstairs with a plate of cocaine, which upset V.M. Appellant and V.M. began arguing when appellant put the cocaine near V.M.'s marijuana. V.M. asked appellant to step into the bathroom with him so they could talk "[l]ike civilized men," but in the bathroom they continued arguing. Appellant pulled out a knife and stabbed V.M. several times. They then came out of the bathroom and continued fighting. V.M. attempted to disarm appellant, who was still holding the knife, and shouted that appellant had just stabbed him. After appellant was disarmed, V.M. began punching him.

V.M. and T.S. left the house, and T.S. called 911. Responding police officers administered first aid to V.M. while waiting for the ambulance. V.M. was taken to North Memorial Medical Center in critical condition with life-threatening injuries that required emergency surgery.

Appellant was charged with first- and second-degree assault and felony domestic assault. Prior to the jury trial, appellant petitioned to proceed pro se. His petition was granted and advisory counsel was appointed. Appellant chose to have a jury trial and proceeded on a claim of self-defense. During the trial, pursuant to Minn. Stat. § 634.20 (2014), the state introduced two instances of relationship evidence through witness testimony.

First, V.M. testified that, on January 26, 2016, he received a call from his mother, who said that appellant was verbally abusing her and physically threatening her. V.M. went to the house, where he witnessed both appellant's verbal abuse and his physical threats to V.M.'s mother and sister. A fight began between appellant and V.M. Appellant pulled out a knife, which V.M.'s sister kicked out of his hand before she called the police.

Second, G.H., another resident of the house, testified that, between December 2015 and March 5, 2016, he witnessed appellant "cussing out" V.M.'s mother, "[t]elling her he would do this, he would do that. He hoped she got hit by a bus" During this time period, appellant threatened V.M.'s mother and sister with a nightstick, and a week before the March 5, 2016 incident, appellant threatened G.H. with a nightstick after G.H. asked him to be quiet.

Appellant never requested, nor did the district court give, any cautionary instruction to the jurors limiting their use of the relationship evidence, and appellant never objected to the failure to give a cautionary instruction. Appellant was found guilty on all counts and sentenced to 135 months in prison.

Appellant now challenges the district court's admission of relationship evidence without providing a cautionary instruction as to its proper use.¹

D E C I S I O N

Where a defendant fails to object to the admission of evidence, we review for plain error. See Minn. R. Crim. P. 31.02; see also *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (holding that an appellate court has discretion to consider an error not objected to if such error is plain and affects substantial rights). Under the plain-error standard, a defendant must show: (1) error; (2) that was plain; and (3) that affected the defendant's substantial rights. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). The third prong is satisfied if "there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). "If those three prongs are met, we may correct the error only if it

¹ Appellant also makes two arguments in his pro se supplemental brief: (1) the evidence is insufficient to support his conviction, and (2) the prosecutor committed misconduct. Appellant provides no citation to the record and fails to make any coherent legal arguments. Appellate courts decline to consider pro se claims that are unsupported by legal analysis or citation. *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Because appellant failed to support his arguments with citations to the record or legal authority, appellant's claims are waived.

seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.”
Strommen, 648 N.W.2d at 686 (quotation omitted).

In cases involving domestic violence, Minn. Stat. § 634.20 governs the admissibility of relationship evidence. It provides in relevant part:

Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, . . . or misleading the jury “Domestic 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. Evidence presented pursuant to section 634.20 is offered to demonstrate the history of the relationship between the accused and the victim of domestic abuse. *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2009).

During trial, relationship evidence was presented by two individuals—V.M. and G.H. As defined by Minn. Stat. § 518B.01, subd. 2 (2014), “‘Family or household members’ means . . . persons related by blood; [and] persons who are presently residing together or who have resided together in the past” Appellant and V.M. are related by blood; appellant and G.H. resided together at the time of the alleged offenses. Because V.M. and G.H. were considered “family or household members” as defined by Minn. Stat. § 518B.01, they were permitted to offer relationship evidence under Minn. Stat. § 634.20.

Appellant argues that the district court erred in admitting relationship evidence without providing a cautionary instruction to the jury about its proper use. A district court should offer a cautionary instruction to the jury regarding the proper use of relationship

evidence under Minn. Stat. § 634.20 both when the evidence is received and in the final jury instructions. *State v. Meldrum*, 724 N.W.2d 15, 21-22 (Minn. App. 2006) (observing that the danger of using this evidence for an improper purpose is “so significant that the precaution of providing a limiting instruction . . . should be applied to relationship evidence.”). However, the failure to supply a limiting instruction on relationship evidence does not automatically constitute plain error, particularly when other evidence demonstrates that the probative value of the relationship evidence is not outweighed by its potential for unfair prejudice. *Id.* at 22.

Appellant argues, and respondent admits, that the district court’s failure to give the jury any limiting instruction regarding the proper use of relationship evidence constitutes an error that was plain. We agree. *See State v. Barnslater*, 786 N.W.2d 646, 654 (Minn. App. 2010) (deeming that the district court’s error in failing to instruct the jury regarding the proper use of the relationship evidence was plain). Therefore, appellant satisfies prongs one and two of the plain-error test.

The third prong of the plain-error test is whether the plain error affected appellant’s substantial rights. Plain error affects an appellant’s substantial rights if it was prejudicial and affected the outcome of the case. *Id.* at 653. This court must look “at the entire record to determine if there is a significant likelihood that the jury misused the evidence, resulting in the evidence improperly affecting the verdict.” *Meldrum*, 724 N.W.2d at 21-22.

Appellant argues that the district court’s plain error affected his substantial rights because the relationship evidence was particularly susceptible to misuse and the jury instructions as a whole did not reduce the likelihood that the jury would misuse the

relationship evidence.² Failure to offer a limiting instruction when there is overwhelming evidence and the prosecution does not suggest any improper use is not an error affecting substantial rights. *Id.* at 22. Contrary to appellant’s argument that the jury instructions did not reduce the likelihood that the jury would misuse the evidence, the jury was otherwise properly instructed. As in *Meldrum*, the record here indicates “that all other jury instructions were properly given, including the presumption of appellant’s innocence, the state’s burden of proof beyond a reasonable doubt, and defining the elements of each charge.” *Id.*

Moreover, overwhelming evidence offered during the trial negates the view that the probative value of the relationship evidence was outweighed by its potential for unfair prejudice. Several witnesses saw appellant emerge from the bathroom holding a knife; the police recovered a sheath for the knife from appellant; appellant and his girlfriend discussed the incident in the back of a police car; and appellant admitted in a post-*Miranda* interview that he stabbed V.M. after a disagreement about a plate of cocaine. Appellant’s substantial rights were not affected by the district court’s failure to issue a cautionary instruction.

Affirmed.

² Appellant also argues that the prosecutor’s focus on the relationship evidence during closing arguments increased the likelihood that the jury misused the evidence. But only two pages of respondent’s 26-page closing argument referenced the relationship evidence.