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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0773**

State of Minnesota,
Respondent,

vs.

Jamie Fuhol Rawson,
Appellant.

**Filed June 3, 2019
Affirmed
Smith, Tracy M., Judge**

Isanti County District Court
File No. 30-CR-17-173

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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Considered and decided by Smith, Tracy M., Presiding Judge; Halbrooks, Judge;
and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Following a jury trial, appellant Jamie Rawson was convicted of third-degree criminal sexual conduct against his former girlfriend, J.R. In this direct appeal, Rawson argues that the district court abused its discretion by admitting, as relationship evidence, J.R.'s testimony that Rawson had been charged with, convicted of, and sentenced for a prior assault against J.R. He also argues that he received ineffective assistance of counsel. We conclude that, even if erroneous, the admission of the challenged evidence was harmless and that Rawson has not established ineffective assistance of counsel. We therefore affirm.

FACTS

Rawson and J.R. were romantically involved and living together in late 2016. After an argument during which J.R. ended the relationship, Rawson left the house. He returned three days later, asking to talk. During the conversation, J.R. realized that Rawson was intoxicated, and she permitted him to sleep on her couch because she “didn’t want him to get into trouble.” During the night, Rawson entered J.R.’s room and, over her verbal and physical resistance, sexually penetrated her. J.R. reported the sexual assault, and Rawson was charged with third- and fourth-degree criminal sexual conduct.

Before trial, the state moved the district court to admit evidence related to a 2013 incident in which Rawson threatened J.R. with a gun and was convicted of second-degree assault. First, the state asked the court to admit evidence of the conviction to impeach Rawson if he chose to testify. Second, the state asked the court to admit testimony

regarding the prior incident, including “evidence of . . . prior complaints and convictions,” as evidence of domestic conduct under Minn. Stat. § 634.20 (2018). Rawson opposed both motions. Following a hearing, the district court ruled that the prior conviction would be admissible for impeachment as an unspecified felony if Rawson chose to testify. The court also ruled that it would “permit testimony by the complaining witness as it relates to that prior incident. And the—and again, reference to—in general to the felony conviction arising out of . . . that incident pursuant to Minnesota Statute 634.20.” The district court required a cautionary instruction before the state introduced any evidence related to the prior incident.

The trial began with testimony from J.R. describing the sexual assault. Then, after the district court instructed the jury that Rawson was not to be convicted based on anything other than the charged conduct, J.R. testified that she was unsure if she could have resisted more than she did, in part because she was afraid of Rawson. She explained the basis of her fear: the 2013 incident in which Rawson loaded a shotgun and followed her around her house threatening to kill her. J.R. then testified, in response to a question about when the incident occurred, that Rawson “was charged with that crime[,] [c]onvicted of second degree assault and went to prison for that.” Rawson did not testify.

The jury found Rawson guilty on both counts of criminal sexual conduct. Rawson was convicted of third-degree criminal sexual conduct and sentenced to 90 months’ imprisonment.

This appeal follows.

DECISION

I. The district court did not commit reversible error in admitting the domestic-conduct evidence.

“Evidence of domestic conduct by the accused against the victim of domestic conduct . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice . . . or by considerations of . . . needless presentation of cumulative evidence.” Minn. Stat. § 634.20.¹ Rawson does not challenge the admission of J.R.’s testimony about the underlying prior act of domestic conduct—that is, Rawson’s following J.R. with a gun and threatening to kill her. Rather, he argues that the district court committed reversible error by allowing J.R. to testify that he was charged with, convicted of, and sentenced for second-degree assault as a result.

We begin with the standard of review. We review a district court’s ruling on the admission of relationship evidence under section 634.20 for an abuse of discretion. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). A defendant must show that the wrongly admitted evidence was not harmless—that is, that it significantly affected the verdict—before a reviewing court will reverse. *State v. Benton*, 858 N.W.2d 535, 541 (Minn. 2015). But, if the party raising the issue on appeal failed to preserve an objection by making it to the district court, we review the admission of evidence for plain error. *State v. Word*, 755 N.W.2d 776, 781 (Minn. App. 2008). To reverse under a plain-error standard,

¹ While it is the courts that are charged with determining the admissibility of evidence, and not the legislature, the Minnesota Supreme Court has adopted section 634.20 as a matter of comity, thus avoiding any possible separation-of-powers concerns with this statute. *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015).

we must determine not only that the district court made (1) an error, (2) that was plain, and (3) that affected the defendant’s substantial rights, but also that the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 781-82. “[T]he third prong of the plain error test is the equivalent of a harmless error analysis.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011).

An objection is not preserved if a district court does not definitively rule on a motion in limine, even if the motion raises the issue that is the subject of appeal. *Word*, 755 N.W.2d at 783. While the district court definitively ruled that Rawson’s conviction was admissible in its decision on the motions in limine (a ruling that implicitly includes the fact that Rawson was charged since conviction is impossible without a charge), it did not definitively rule on the admissibility of evidence that Rawson was sentenced for his crime. Thus, the district court’s admission of evidence of Rawson’s charge and conviction is subject to review for an abuse of discretion and harmless error, but admission of the fact that he was sentenced is subject to plain-error review. However, for ease of analysis and because of overlap in the two standards, we address Rawson’s charge, conviction, and sentence together.

A. Admission of the evidence

Rawson makes two arguments why the district court abused its discretion in admitting evidence, which we address in turn.

Rawson first argues that J.R.’s testimony about his charge, conviction, and sentence for second-degree assault was not admissible under section 634.20 “because it is not domestic conduct”—that is, because the charge, conviction, and sentence were actions

taken by the government in response to domestic conduct and were not themselves domestic conduct, evidence of those facts was inadmissible.

Evidence that tends to make the existence of domestic conduct more probable is evidence of domestic conduct. See Minn. R. Evid. 401 (“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence . . . more probable or less probable than it would be without the evidence.”); *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005) (“Evidence is relevant and has probative value when it, in some degree, advances the inquiry.”).

Many facts may be proved inferentially by evidence of the consequences of those facts. For example, that a battery occurred may be proved by evidence of injuries, that a person is not credible may be proved by evidence of felony convictions, and that a person engaged in conduct constituting a crime may be proved by the person’s conviction for the crime. See *State v. Hill*, 801 N.W.2d 646, 652 (Minn. 2011) (explaining that the fact that a witness has been convicted of a felony tends to prove a “general lack of respect for the law,” thus making that witness less credible; the court’s reasoning only makes sense if the fact of conviction tends to prove that the witness actually violated the law); *State v. Denison*, 607 N.W.2d 796 (Minn. App. 2000) (discussing evidence of a prior conviction for marijuana possession as evidence that the person convicted once possessed illegal drugs), *review denied* (Minn. June 13, 2000); *State v. Nordstrum*, 385 N.W.2d 348, 350-52 (Minn. App. 1986) (holding that bruises and testimony about the nature of the bruises and when they were discovered were sufficient circumstantial evidence to sustain a conviction for fifth-degree assault, without any witnesses to the assault). In the same way,

the fact that Rawson was charged with, convicted of, and sentenced for second-degree assault for threatening J.R. with a shotgun tends to make it more probable that he did, in fact, threaten J.R. with a shotgun. The district court did not abuse its discretion in concluding that Rawson's charge, conviction, and sentence were "evidence of domestic conduct" under the statute.

But Rawson makes a second argument why the district court erred. He contends that, even if the challenged testimony was evidence of domestic conduct, the district court abused its discretion in admitting the evidence because the fact that he was charged, convicted, and sentenced has a low probative value that was substantially outweighed by the possibility of unfair prejudice. *See* Minn. Stat. § 634.20 (specifying the standard for admissibility of evidence of domestic conduct).

Evidence of past violence by the defendant against the same victim has "inherent value." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). It is relevant "when it provides context for the crime charged." *State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010). Evidence of domestic conduct can also "illuminat[e] the relationship of defendant and complainant." *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999) (quotation omitted). And it may help establish motive and intent. *Id.*

As for unfair prejudice in the admission of evidence, the question is not whether the evidence damages a defendant's case but whether it "persuades by illegitimate means, giving one party an unfair advantage." *Bell*, 719 N.W.2d at 641 (quotation omitted). When the district court gives a limiting instruction, the risk that the jury will inappropriately rely on the relationship evidence is reduced. *State v. Patzold*, 917 N.W.2d 798, 805-06 (Minn.

App. 2018), *review denied* (Minn. Nov. 27, 2018); *see also State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005) (“It is presumed that the jury follows the court’s instructions.”). In addition to unfair prejudice, courts should also consider whether evidence is needlessly cumulative. *See* Minn. Stat. § 634.20. Evidence is cumulative if it “merely duplicate[s] other evidence already presented.” *State v. Buchanan*, 431 N.W.2d 542, 551 (Minn. 1988) (analyzing the exclusion of evidence under Minn. R. Evid. 403, which requires the same weighing as does section 634.20).²

Here, the relationship evidence was relevant mainly as a way to prove an element of the charged crime. Rawson was charged with committing third-degree criminal sexual conduct by using “force or coercion to accomplish” sexual penetration with J.R. Minn. Stat. § 609.344, subd. 1(c) (2016). “‘Coercion’ means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant” Minn. Stat. § 609.341, subd. 14 (2018) (defining coercion for the purposes of section 609.344). The state framed J.R.’s testimony about the prior second-degree assault by eliciting testimony from J.R. suggesting that she was afraid of

² Rawson contends that the probative value of the charge, conviction, and sentence should be steeply discounted because the state had other, less-prejudicial ways to prove the same thing—specifically, the state could and did introduce J.R.’s testimony about the incident itself. Rawson’s argument relies on a portion of *Old Chief v. United States* in which the United States Supreme Court held that, in the context of a defendant’s stipulation to the existence of a prior felony as an element of the crime, the probative value of a piece of evidence is discounted if there is other, less-prejudicial evidence available to the state on the same point. 519 U.S. 172, 182-85, 117 S. Ct. 644, 651-52 (1997). The applicability of *Old Chief*’s discounting principle in Minnesota has not been definitively settled—the Minnesota Supreme Court has neither adopted it nor rejected it. However, we need not decide the applicability of *Old Chief* here because of our conclusion that Rawson suffered no prejudice. *See infra* part I.B.

Rawson during the sexual assault. Rawson’s prior assault provided context that would allow the jury to better understand why J.R. would fear that he would inflict bodily harm upon her. Thus, the evidence had at least some probative value. We also recognize the value of logical and coherent narratives in testimony. *See Old Chief*, 519 U.S. at 187-189, 117 S. Ct. at 653-54. The credibility of J.R.’s narrative about the assault was legitimately reinforced because she mentioned the legal consequences of the act, making her description of the prior domestic conduct more logical and complete.

But, as is generally true of evidence of prior bad acts, this evidence also carried with it the risk that a jury could convict Rawson because it believed him to be a bad person, rather than because it was persuaded the evidence showed he committed the crimes. *See Ture v. State*, 681 N.W.2d 9, 19-20 (Minn. 2004) (describing the “potential for prejudice” with *Spreigl* evidence as “inherent”). The prejudicial nature of the evidence may have been compounded by the fact that it appears to have been gratuitous—the state had just introduced direct testimony about the conduct constituting second-degree assault. We have concerns that the legitimate persuasive value of the facts of charge, conviction, and sentence—that is, their tendency to prove that Rawson committed prior domestic conduct against J.R.—was outweighed by the possibility that the evidence illegitimately suggested that Rawson had a propensity to be violent against J.R. This possibility appears magnified because J.R. had already described the domestic conduct in detail.

But we need not decide whether admission of the evidence was an abuse of discretion or plainly erroneous if Rawson was not prejudiced by any error. *Benton*, 858

N.W.2d at 541 (declining to consider whether a district court erred in its evidentiary ruling because the evidence did not significantly affect the verdict). We turn to that question.

B. Prejudice resulting from any error

Even if a district court abuses its discretion by admitting inadmissible evidence, a conviction need not be reversed unless “there is a reasonable possibility that the wrongfully admitted evidence ‘significantly affected the verdict.’” *Id.* (quoting *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994)). Again, because this is the same standard as the third prong of plain-error review, we analyze all three purportedly prejudicial pieces of evidence (charge, conviction, and sentence) together. *See Matthews*, 800 N.W.2d at 634 (“[T]he third prong of the plain error test is the equivalent of a harmless error analysis.”).

When considering whether the admission of prior-bad-acts evidence was harmless, the Minnesota Supreme Court examines four factors: (1) whether the state presented other evidence on the issue for which the evidence was offered; (2) whether there was an appropriate limiting instruction; (3) “whether the [s]tate dwelled on the evidence in [its] closing argument”; and (4) “whether the evidence of guilt was overwhelming.” *State v. Riddley*, 776 N.W.2d 419, 428 (Minn. 2009).³

³ The parties both suggested a test with slightly different factors, drawn from *State v. Peltier*, which examines: “(1) the manner in which the State presented the testimony; (2) whether the testimony was highly persuasive; (3) whether the State used the testimony in closing argument; and (4) whether the defense effectively countered the testimony.” 874 N.W.2d 792, 802 (Minn. 2016) (citing *Matthews*, 800 N.W.2d at 634). However, the test from *Riddley* has been applied by the supreme court specifically to evidence of prior bad acts, and its factors are a better fit for that type of evidence. *See State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016) (evaluating the harmlessness of evidence admitted under Minn. R. Evid. 404(b)); *Benton*, 858 N.W.2d at 541-42 (evaluating the harmlessness of evidence admitted under Minn. Stat. § 634.20).

Rawson is not challenging the admission of J.R.’s testimony about the conduct that led to conviction but only her testimony about the charge, conviction, and sentence. Thus, the state did present other evidence on the issue of Rawson’s prior domestic conduct and how it made her fear Rawson. Next, there was an appropriate—and stipulated-to—limiting instruction. Third, while the state mentioned J.R.’s testimony about the conviction in its closing argument, it did so only once, and certainly did not “dwell[] on” that evidence. Indeed, the state’s closing argument properly framed the challenged evidence as a way to understand J.R.’s fear and find coercion, rather than unfairly suggesting that Rawson has a propensity for criminal behavior. Finally, we consider the overwhelming-evidence factor. J.R.’s testimony was undoubtedly sufficient to support the conviction. The testimony of a victim of criminal sexual conduct need not be corroborated, Minn. Stat. § 609.347, subd. 1 (2018), and J.R.’s testimony was corroborated by her own consistent, detailed description of Rawson’s conduct and by the testimony of others about her emotional state, *see State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004) (stating that prior consistent statements, the level of detail in testimony, and testimony of others about a victim’s “emotional condition” may be corroborative evidence), *review denied* (Minn. June 29, 2004). But the testimony of a single witness is not “overwhelming,” even if it is corroborated and not seriously controverted. Nonetheless, given the strength of the other three factors and the consistency of J.R.’s testimony, any abuse of the district court’s discretion in admitting the facts of Rawson’s previous charge, conviction, and sentence was harmless.

II. Rawson was not denied effective assistance of counsel.

In a pro se supplemental brief, Rawson argues that he was denied effective assistance of counsel. To prove ineffective assistance of counsel, “an appellant must demonstrate that counsel’s performance ‘fell below an objective standard of reasonableness, and that a reasonable probability exists that the outcome would have been different but for counsel’s errors.’” *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (quoting *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998)).

Several of Rawson’s claims—that he had many different attorneys, that his attorneys spent little time with him, that they gave him pretrial advice about cooperating with DNA testing that he asserts was ineffective, and that his attorney at trial failed to challenge a discrepancy between J.R.’s testimony and charges in another criminal case against him—turn on evidence outside the record. “A reviewing court cannot base its decision on matters outside the record on appeal” *State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001) (quotation omitted). Rawson cannot pursue these claims on this record and we reject them.

Rawson’s other claims of ineffective assistance are based on record evidence. They consist of a list of citations to the trial transcript identifying moments when he believes his attorney should have objected or pursued further examination. But not one of his claims contains legal citation, identifies a basis for the objection, or explains how the failure prejudiced him. Rawson forfeited these claims by failing to include argument or legal citation. See *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (deeming allegations of

wrongdoing by trial counsel and the district court to be forfeited when unsupported by “argument or citation to legal authority”).

Affirmed.