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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1092**

State of Minnesota,
Respondent,

vs.

Elwin Louis Klimek,
Appellant.

**Filed April 15, 2019
Affirmed
Slieter, Judge**

St. Louis County District Court
File No. 69VI-CR-18-9

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

Mark S. Rubin, St. Louis County Attorney, Karl G. Sundquist, Assistant County Attorney,
Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Slieter, Judge; and Klaphake,
Judge.*

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

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Elwin Louis Klimek challenges his conviction for violating a harassment restraining order (HRO), arguing that the district court committed plain error when it admitted the unredacted HRO into evidence. We affirm.

FACTS

On December 28, 2017, A.C. contacted the Virginia Police Department and reported that appellant called her work phone and left a voicemail the day before. A.C. had a valid restraining order against appellant at the time. The HRO forbid appellant from having any contact with A.C. Respondent State of Minnesota charged appellant with one count of violating the HRO under Minn. Stat. § 609.748, subd. 6(c) (2016).

On April 5, 2018, the district court held a jury trial. The state introduced the HRO into evidence and it was received with no objection. The HRO states that there is reasonable grounds to believe that appellant harassed A.C. by making harassing phone calls, making threats, and frightening A.C. with threatening behavior. It forbids appellant from making direct or indirect contact with A.C., including phone calls, for a period of two years and is dated July 18, 2016.

The jury found appellant guilty. The district court sentenced appellant to 91 days in jail. This appeal follows.

DECISION

Appellant argues that the district court committed plain error by admitting the HRO into evidence without redacting the portion that summarized the bad acts committed by appellant. We disagree.

When a defendant fails to object to an alleged error at trial, this court reviews for plain error. *State v. Hill*, 801 N.W. 2d 646, 654 (Minn. 2011). In applying the plain-error test, we reverse only if the appellant demonstrates that the district court (1) committed an error, (2) that was plain, and (3) that affected the defendant's substantial rights. *Id.* A district court error is plain "when it contravenes a rule, case law, or a standard of conduct, or when it disregards well-established and longstanding legal principles." *State v. Brown*, 792 N.W.2d 815, 823 (Minn. 2011). A defendant's substantial rights are affected when "there is a reasonable likelihood that the error substantially affected the verdict." *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002). If those three prongs are satisfied, we may still only correct the error if doing so would ensure the fairness and integrity of the judicial proceedings. *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001).

It is unnecessary to decide whether it was error to admit the unredacted HRO, because there is no possibility that doing so impaired appellant's substantial rights. Appellant argues that his right to a fair trial was impaired by the HRO's introduction because "[b]y introducing this evidence in the form of a judicial finding, the official imprimatur of an otherwise neutral court was placed on this evidence."

This argument is unpersuasive. Even if the HRO had been redacted, the same information was conveyed to the jury through A.C.'s testimony. At trial, A.C. testified

that, as a part of her law practice, she became involved with a case dealing with a family member of appellant. She represented appellant's mother, a vulnerable adult. A.C. testified that because of "threatening messages left for me at my place of employment," she removed herself from the case, and eventually sought an HRO against appellant. What A.C. explained in her testimony was the same information as the statements appellant claims should have been redacted from the HRO. Appellant cannot demonstrate prejudice because there is no reason to believe that the statements in the HRO impacted the outcome of the trial when A.C. testified to the same facts.

The argument that the unredacted HRO amounted to the district court judge "vouching" for the credibility of A.C. is also unpersuasive. The primary contested issue in this case was whether appellant *knew* he was not allowed to contact A.C., and A.C. did not testify as to that element. All she testified to was that she had the HRO taken out against appellant, and that he violated it. Appellant testified that he did not know he was not allowed to call her. The fact that the jury did not believe him concerns his credibility, not A.C.'s. Thus, there is no reasonable likelihood that admitting the unredacted HRO substantially affected the verdict.

Affirmed.