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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1451

State of Minnesota,
Respondent,

vs.

Timothy Lee Vredenburg,
Appellant.

Filed July 15, 2019
Affirmed
Halbrooks, Judge

Mille Lacs County District Court
File No. 48-CR-17-2622

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Christen Chapman, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant challenges his conviction of felony domestic assault-fear, arguing that the evidence is insufficient to prove that (1) he intended to cause fear in the victim, (2) the

prosecutor committed multiple instances of plainly erroneous misconduct, and (3) the district court erred by admitting substantially prejudicial relationship evidence and by failing to provide a contemporaneous limiting instruction. We affirm.

FACTS

Appellant Timothy Lee Vredenburg had an on-again, off-again relationship with D.K. for more than six years. Vredenburg and D.K. lived together for nearly half of the relationship until Vredenburg moved out in spring of 2017. In November 2017, unbeknownst to D.K., Vredenburg began staying with her neighbors.

In December 2017, D.K. went to the neighbors' home, and Vredenburg answered the door, surprising D.K. D.K. made a comment, and Vredenburg responded by picking D.K. up and carrying her out onto the deck. D.K. dropped to her knees to avoid being carried, but Vredenburg picked her up again. D.K. was afraid that Vredenburg was going to throw her down the deck stairs. Upset, she called the police. When the police arrived, they knocked on the door of the neighbors' house, causing the door to swing open. After the neighbors arrived home and gave consent, the police entered the home and found Vredenburg hiding in a bedroom, covered in blankets between a bed and the wall.

Vredenburg was arrested and charged with one felony count of domestic assault-fear, and one felony count of domestic assault-harm. Pursuant to Minn. Stat. § 634.20 (2016), the state moved to admit evidence of Vredenburg's past domestic conduct against D.K., which included striking and kicking her, throwing her down a flight of stairs, throwing her against a wall, taking away her phone, and confining her to a room. The district court allowed D.K. to testify about their relationship history during the two-day

jury trial in 2018. The jury convicted Vredenburg of domestic assault-fear but acquitted him of domestic assault-harm. The district court sentenced Vredenburg to 27 months in prison. This appeal follows.

D E C I S I O N

I.

Vredenburg challenges the sufficiency of the evidence, contending that it is insufficient to prove beyond a reasonable doubt that he intended to cause fear in D.K. On review of a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the verdict and assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). Vredenburg specifically challenges the sufficiency of the evidence on the element of intent, which may be proved by circumstantial evidence. *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001); *see also Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) ("Intent is generally proved by inferences drawn from a person's words or actions in light of all the surrounding circumstances." (quotation omitted)). To determine if circumstantial evidence is consistent with Vredenburg's guilt, we apply a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013).

First, we identify the circumstances proved, construing the evidence in the light most favorable to the verdict and deferring to the jury's determinations. *State v. Petersen*, 910 N.W.2d 1, 6-7 (Minn. 2018). Second, we independently determine the reasonableness of the inferences a jury could draw from the circumstances proved. *Silvernail*, 831 N.W.2d at 599. We do not look at the circumstances proved as isolated facts but instead as a whole

to determine whether they form a "complete chain that . . . leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). All circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010).

Vredenburg was convicted of felony domestic assault-fear pursuant to Minn. Stat. § 609.2242, subds. 1, 4 (2016), which provide that a person commits an assault and is guilty of a felony when, within ten years of the first of two or more previous domestic violence-related offense convictions, they commit "an act with intent to cause fear in another of immediate bodily harm or death." "'With intent to' . . . means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2016). Although a finding of intent generally cannot be based solely on the effect that the actor's conduct has on the victim, a victim's reaction to that conduct is circumstantial evidence that is relevant to intent. *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975); *T.N.Y.*, 632 N.W.2d at 769. Intent may be inferred "from the idea that a person intends the natural consequences of his or her actions." *Nelson*, 880 N.W.2d at 860 (quotation omitted).

When viewed in the light most favorable to the verdict, the circumstances proved are as follows: Vredenburg and D.K. lived together until he moved out of her home, and moved in with her neighbors. D.K. did not know that Vredenburg was staying there. A no-contact order was issued in 2017, prohibiting Vredenburg from having contact with D.K. In December 2017, D.K. went to the neighbors' home and was surprised when

Vredenburg answered the door. D.K. made a comment to Vredenburg, who responded by picking her up and carrying her out onto the deck. D.K. tried to kneel in order to prevent Vredenburg from picking her up, but he continued to carry her. D.K. testified that she believed that Vredenburg was going to throw her down the stairs, in part because of their history. Vredenburg had previously thrown D.K. down a flight of stairs. D.K. called 911 twice and was distraught when officers arrived.

Vredenburg contends that the circumstances proved do not exclude a rational inference that he was trying to make space between himself and D.K. He argues that his conduct was not aggressive and that he did not carry her anywhere near the stairs, but was simply trying to create physical distance between them. But in light of the evidence presented at trial, Vredenburg's hypothesis is not a rational one.

Vredenburg chose to open the door to D.K. and to physically engage with her, despite the no-contact order. Vredenburg intended the natural and probable consequences of his actions when he grabbed D.K. *See id.* D.K. testified that she believed Vredenburg was going to throw her down the stairs and that she was afraid. When viewed in the context of the tumultuous relationship history between Vredenburg and D.K., the only rational hypothesis supported by the circumstances proved is that Vredenburg intended to cause fear in D.K. Based on our review of the record, Vredenburg's argument that the evidence is insufficient to prove his intent lacks merit. We conclude that the jury's finding of guilt is supported by sufficient evidence.

II.

Vredenburg asserts that he is entitled to a new trial because of multiple instances of prosecutorial misconduct. Because Vredenburg did not object at trial, the standard of review is modified plain error. *State v. Martin*, 773 N.W.2d 89, 104 (Minn. 2009). The burden is on Vredenburg to identify prosecutorial error and to demonstrate that the error was plain. *Id.* If successful, the burden shifts to the state to show that the plain error did not affect Vredenburg's substantial rights. *Id.* We will not order a new trial unless it is necessary to preserve the fairness, integrity, and public reputation of judicial proceedings. *Id.* All of the statements that Vredenburg alleges are improper were made during the prosecutor's closing argument. On review of a closing argument, we do not isolate particular statements but instead view the argument as a whole. *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006).

Vredenburg contends that the prosecutor (1) impermissibly referred to facts not in evidence, (2) used the admitted relationship evidence for an improper purpose, (3) impermissibly disparaged the defense, (4) impermissibly invited the jury to consider Vredenburg's socioeconomic status, (5) impermissibly aligned himself with the jury through the use of collective pronouns, and (6) impermissibly vouched for D.K.'s credibility. We address each contention in turn.

First, Vredenburg asserts that the prosecutor impermissibly referred to facts not in evidence when using the phrase "battered women" because it invoked the theory of "battered woman syndrome" without supporting expert testimony. But when viewed in context of the entire closing, this argument is unavailing. A prosecutor may "present to

the jury all legitimate arguments on the evidence, . . . analyze and explain the evidence, and . . . present all proper inferences to be drawn therefrom." *State v. Wahlberg*, 296 N.W.2d 408, 419 (Minn. 1980). Here, the prosecutor's statement was in response to a rhetorical question by the defense. During closing argument, defense counsel attacked D.K.'s credibility and pointed out specific details from her and asked, "Who remembers these things?" The prosecutor stated, "Then [defense counsel] says, 'Who remembers these things?' . . . Battered women do. It's a traumatic event." When viewed in the context of the entire closing argument, the statement regarding "battered women" was made in response to defense counsel's argument, and presents a fair inference from D.K.'s testimony rather than an attempt to invoke the "battered woman syndrome." *See State v. Rose*, 353 N.W.2d 565, 569 (Minn. App. 1984), *review denied* (Minn. Sept. 12, 1984). Vredenburg has not met his burden of demonstrating plain error.

Second, Vredenburg contends that the prosecutor committed misconduct by using relationship evidence for an improper purpose. Vredenburg points specifically to statements made by the prosecutor such as, "[f]or six years, she's been through hell and back with this man" and:

> So here now after six years of being victimized by this man she's fed up . . . . She finally stood up for herself. . . . She comes in this chair and faces her abuser, abuser of six years. You saw how hard it was for her to testify to all that. Took her six years to get to that point. Don't take that away from her.

Vredenburg contends that the prosecutor impermissibly invited the jury to consider the past instances of conduct as propensity evidence and to punish Vredenburg for his past acts. But evidence of domestic conduct by a defendant against the same victim is inherently

relevant, and using it to contextualize the defendant's intent and the relationship between the defendant and victim is a permissible use of such evidence. *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999).

Here, the statements made by the prosecutor were not an impermissible appeal to the jury, but rather served to contextualize the nature of the relationship between Vredenburg and D.K. Further, the statements rebutted arguments made by defense counsel that D.K. engaged in a "pattern" of manipulating law enforcement over several years and was uncooperative. Vredenburg has not met his burden of demonstrating plain error.

Third, Vredenburg asserts that the prosecutor impermissibly disparaged the defense during closing argument by (1) stating that the defense had engaged in "victim blaming," (2) suggesting that the defense would imply that D.K. "deserved it," and (3) stating that "it takes a lotta guts to call a battered woman a liar and a drug addict."

Our review of the record belies Vredenburg's assertions. The prosecutor's statement about "victim blaming" was not a reference to the defense, but rather to Vredenburg's recorded statement that was admitted into evidence, in which Vredenburg said that D.K. used drugs, had been to the "psych ward," and was responsible for their turbulent relationship history. In context, the prosecutor's statement is an argument about Vredenburg's credibility and the evidence itself, rather than a disparaging remark about the defense. The prosecutor argued that Vredenburg was not credible because his impulse was to blame and badmouth D.K. when "confronted with a story [he] do[es not] like."

The prosecutor's statements suggesting that the defense would imply D.K. "deserved it" and that "it takes a lotta guts to call a battered woman a liar and a drug addict"

appear to be responses to reasonably anticipated defense theories, and thus, permissible. *State v. Salitros*, 499 N.W.2d 815, 818 (Minn. 1993). For example, during opening statements, defense counsel asked the jury, "If you had a history of someone and they frightened and scared you, would you go and seek them out?" During cross-examination, the defense implied that D.K. knew that Vredenburg was at the neighbor's house and asked her why she would insult someone she was afraid of. Similarly, the statement implying that the defense called "a battered woman a liar and a drug addict" appears to be in reference and rebuttal to statements made by the defense throughout the trial that characterized D.K. as a drug user who was uncooperative and manipulative of law enforcement. In context, the prosecutor's statements are permissible rebuttals to anticipated defense theories. We conclude that Vredenburg has not met his burden of demonstrating plain error with respect to any of these instances of alleged misconduct.

Fourth, Vredenburg contends that the prosecutor impermissibly invited the jury to consider his socioeconomic status by making statements regarding D.K.'s and Vredenburg's "lifestyles." Specifically, Vredenburg points to the prosecutor's statement that the jury may not like "some of the lifestyles people live" and commented that "[s]ome people have tough lives. . . . They live in cars. Have odd relationships with their exes." But at no time did the prosecutor reference Vredenburg's socioeconomic status. And it is permissible to make arguments to alleviate potential bias based on perceived lack of likeability, which is what occurred here. *See State v. Melanson*, 906 N.W.2d 561, 569 (Minn. App. 2018), *review granted* (Minn. Mar. 28, 2018) *and appeal dismissed* (Minn. June 5, 2019). Vredenburg has not met his burden of demonstrating plain error.

Vredenburg also asserts that the prosecutor impermissibly aligned himself with the jury through the use of collective pronouns by stating that D.K. did not make any misrepresentations to law enforcement "that we know of." The use of collective pronouns is generally prohibited when used to draw an exclusionary distinction between the defendant and the rest of the community, but collective pronouns may be used for other purposes. *Nunn v. State*, 753 N.W.2d 657, 663 (Minn. 2008); *State v. Mayhorn*, 720 N.W.2d 776, 790 (Minn. 2006). Here, the prosecutor's statements were made in reference to D.K., not Vredenburg. It appears that the word "we" in the prosecutor's statement referred collectively to everyone in the courtroom and did not draw an exclusionary distinction between Vredenburg and the rest of the community. Thus, Vredenburg has not met his burden of demonstrating plain error.

Vredenburg asserts that the prosecutor impermissibly vouched for D.K.'s credibility by stating that the "[d]efense is calling [D.K.] a liar. I say she's anything but." The state concedes that the "prosecutor should have avoided inartfully using the personal pronoun 'I,'" but that in context, the argument was contrasting "the state's position with that of the defense" as part of a broader argument about D.K.'s credibility. A prosecutor is allowed to analyze evidence and argue about the credibility of witnesses. *State v. Googins*, 255 N.W.2d 805, 806 (Minn. 1977). But it is error to guarantee a witness's truthfulness or express a "personal opinion as to a witness's credibility." *State v. Patterson*, 577 N.W.2d 494, 497 (Minn. 1998) (quotation omitted). Because we conclude that the prosecutor's use of the word "I" in this context was plain error, the burden shifts to the state to show that the error did not affect Vredenburg's substantial rights. Prosecutorial error does not affect

a defendant's substantial rights when "there is no reasonable likelihood that the absence of the misconduct in question would have a significant effect on the verdict of the jury." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). "To evaluate the effect on substantial rights, we consider various factors, including the pervasiveness of improper suggestions and the strength of evidence against the defendant." *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017) (quotations omitted).

The record demonstrates that the absence of this instance of misconduct would not have had a significant effect on the verdict of the jury. Vredenburg was acquitted of assault-harm and convicted of assault-fear, which strongly indicates that the jury's verdict was not affected by the prosecutor's error. *State v. Washington*, 521 N.W.2d 35, 40 (Minn. 1994) ("Where the jury has acquitted the appellant of some counts, but convicted the appellant of others, we view the verdicts as an indication that the members of the jury were not unduly inflamed by the prosecutor's comments." (quotation omitted)). Additionally, the prosecutor's misconduct was limited to a single statement in a lengthy closing argument. The supreme court has held that prejudicial prosecutorial error is generally found "only in extreme circumstances." *State v. McDaniel*, 777 N.W.2d 739, 752 (Minn. 2010). Based on our review of the record, we conclude that Vredenburg's substantial rights were not prejudiced by the prosecutor's misconduct.

III.

Vredenburg argues that the district court erred by admitting unfairly prejudicial relationship evidence. Vredenburg asserts that we should review this contention under an abuse-of-discretion standard, while the state argues that plain-error review should apply.

The record reflects that Vredenburg's attorney did not obtain a definitive pretrial ruling from the district court on this issue. Instead, Vredenburg's attorney stated that he would object to the relationship evidence during the testimony of D.K. But he did not subsequently object to the testimony. Accordingly, we apply the plain-error standard of review. *State v. Word*, 755 N.W.2d 776, 783 (Minn. App. 2008). Under a plain-error standard of review, Vredenburg has the burden to demonstrate an error, that is plain, that affected his substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

Minn. Stat. § 634.20 governs the admissibility of "[e]vidence of domestic conduct by the accused against the victim of domestic conduct . . . ." which is admissible unless "the probative value is *substantially* outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by . . . needless presentation of cumulative evidence." (Emphasis added.) "When balancing the probative value against the potential prejudice, unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted). Persuasion by illegitimate means includes leading the jury to misuse relationship evidence as propensity evidence. *See State v. Hormann*, 805 N.W.2d 883, 891 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012).

Here, the relationship evidence introduced was within the bounds of Minn. Stat. § 634.20, and was particularly probative on the element of intent. *State v. Barnslater*, 786 N.W.2d 646, 652 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010). D.K.'s testimony provided context to her relationship with Vredenburg. And the state correctly

points out that the risk of undue prejudice was limited both by the narrow scope of D.K.'s testimony and by a cautionary instruction to the jury. Based on our review of the record, we conclude that the district court did not err by admitting the relationship evidence pursuant to Minn. Stat. § 634.20.

Vredenburg asserts that the district court erred by failing to provide the jury a limiting instruction that was contemporaneous with D.K.'s testimony. We have previously stated that it is a best practice for the district court to give a limiting instruction both when relationship evidence is admitted and during final jury instructions. *State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007). The supreme court recently addressed this issue in *State v. Zinski*, stating that "when a district court admits relationship evidence under Minn. Stat. § 634.20, over a defendant's objection . . . the court must sua sponte instruct the jurors on the proper use of such evidence, unless the defendant objects to the instruction by the court." 927 N.W.2d 272, 278 (Minn. 2019).

In this case, Vredenburg did not object to the introduction of the relationship evidence. And the district court did give a limiting instruction at the close of evidence. On review, it is presumed that juries follow instructions. *State v. Gatson*, 801 N.W.2d 134, 151 (Minn. 2011); *State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010); *State v. Taylor*, 650 N.W.2d 190, 207 (Minn. 2002). While the district court ideally should have given a contemporaneous limiting instruction at the time the evidence was introduced, Vredenburg has not met his burden of showing that failure to give an initial limiting instruction was plain error.

Affirmed.