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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0496**

State of Minnesota,
Respondent,

vs.

Lee Andrew Bolton,
Appellant.

**Filed March 30, 2020
Reversed and remanded
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-18-3457

Keith Ellison, 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, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of second-degree assault, arguing that the district court plainly erred by admitting evidence regarding his prior assaultive behavior, criminal complaints, and criminal convictions as relationship evidence under Minn. Stat. § 634.20 (Supp. 2019).¹ He raises additional issues in a pro se supplemental brief, including a suggestion that the evidence was insufficient to sustain his conviction. As to the alleged evidentiary error, appellant has satisfied all four parts of the plain-error standard. We therefore reverse his conviction. And because the evidence was sufficient to sustain appellant's conviction, we remand for a new trial.

FACTS

Respondent State of Minnesota charged appellant Lee Andrew Bolton with second-degree assault under Minn. Stat. § 609.222, subd. 1 (2016). The complaint alleged that, on January 7, 2018, Bolton became angry with another man, M.E., while they were at a home in Hennepin County. Bolton allegedly knocked M.E. to the floor and attempted to stab him with a kitchen knife. M.E. blocked the knife with his left hand, resulting in a serious laceration to his hand.

Prior to trial, the state filed a "Notice of Relationship History Evidence Pursuant to Minn. Stat. § 634.20." The notice stated that M.E. was the current boyfriend of Bolton's

¹ The legislature amended Minn. Stat. § 634.20 in 2019. 2019 Minn. Laws 1st Spec. Sess. ch. 5, art. 2, § 27, at 973. Because that amendment does not affect our application of section 634.20 in this case, we cite to the current version of the statute.

former girlfriend, N.M. It further stated that Bolton and N.M. had been in a relationship from 2003 to 2012 and that they had a daughter in 2004. The state sought to admit evidence regarding the following “specific incidents of assaultive behavior”: (1) Bolton assaulted N.M.’s sister’s boyfriend in 2006, (2) Bolton assaulted N.M. in 2008, and (3) Bolton assaulted N.M. in 2010.

Bolton’s attorney filed a written objection to the purported relationship evidence, arguing that Minn. Stat. § 634.20 did not apply because the state had not charged Bolton with domestic assault. Later, Bolton discharged his attorney, waived his right to counsel, and was allowed to represent himself at trial.

The district court held a jury trial over the course of four days in December 2018. At the start of trial, the district court considered the state’s motion to admit evidence regarding Bolton’s prior assaultive behavior. The state argued that its proffered evidence was admissible under Minn. Stat. § 634.20. Bolton responded that N.M. and M.E. were not credible. Bolton also stated that the proffered evidence did not “bother” him because he did not commit the crime. The district court clarified Bolton’s position regarding the proffered evidence as follows:

THE COURT: Well, okay, Mr. Bolton, let’s just focus for a minute. He wants to allow [N.M.] to testify about prior acts that you committed.

BOLTON: Mm hm.

THE COURT: And you are saying that’s fine with you?

BOLTON: That’s fine with me because I am going to have her explain. So that’s no problem. It’s going to be both sides. That’s no problem.

THE COURT: Okay.

THE PROSECUTOR: And the state does have certified convictions for those offenses which we would admit into evidence at that time.

BOLTON: Yeah.

The district court noted that Bolton's discharged attorney had filed a notice opposing the state's motion to admit relationship evidence.

THE COURT: Mr. Bolton, is there anything more you want to say? [Defense counsel] objected to that on your behalf.

BOLTON: Yes, that was fine, but I'm not concerned about that. He can have that. It doesn't bother me.

THE COURT: When you say he can have that—

BOLTON: He can have, that evidence he wants to bring in, no problem, he can have that.

At trial, N.M. testified regarding the three incidents that the state had noticed. She explained that Bolton had hit her sister's boyfriend "upside the head" with a metal pole in 2006; assaulted her, her sister, and her ten-year-old niece in 2008; and "hit numerous people in [her] family" with his fists on December 25, 2010. N.M. testified that Bolton was arrested for each of those incidents and that he had been convicted of crimes based on the 2006 and 2008 incidents. Bolton did not object to that testimony.

In addition to providing N.M.'s testimony regarding the prior incidents, the state offered and the district court received the resulting criminal complaints as exhibits. The criminal complaints described the offenses in greater detail. The 2006 complaint explained that Bolton used a "two to three foot rusty pipe" and "swung the pipe over the top of [the victim's] head." The 2008 complaint stated that Bolton "began punching [N.M.] in her face with a closed fist," "picked up a fan and began hitting [N.M.] with it," and assaulted N.M.'s sister and ten-year-old niece when they tried to intervene. The 2010 complaint

stated that Bolton “threw a full and unopened can of beer at [N.M.’s] face, causing a deep laceration in [N.M.’s] face,” threw cans of beer at other people, and then “began to punch [N.M.] and other family members in the face.”

The 2008 and 2010 criminal complaints also described Bolton’s conviction history, indicating that he had previously been convicted of the following offenses: fifth-degree assault in 2006, domestic assault in 2006, second-degree assault in 2006, and domestic assault in 2009. Bolton did not object to the admission of the criminal complaints.

At trial, Bolton raised an alibi defense. Bolton presented evidence that at the time of the alleged crime, he resided at a shelter in St. Paul. Another resident of that shelter testified that Bolton was watching a football game with him at the shelter around the time of the alleged crime. The parties stipulated to the admission of two documents regarding Bolton’s presence at the shelter on the night of the alleged crime. The first document was a letter from the shelter’s operations manager, stating that Bolton was present for all bed checks at the shelter on the night of the alleged crime. The second document was an email from the same manager indicating that bed checks were conducted every hour from 10:00 p.m. to 3:00 a.m.

The trial evidence indicated that N.M. called the police to report the underlying offense at 7:58 p.m., that the police left the alleged crime scene at 8:28 p.m., and that Bolton returned to the scene after the police left. In his closing argument, Bolton argued that he could not have committed the assault in that time frame and also been present for his 10:00 p.m. bed check at the shelter. Specifically, Bolton argued that he could not have traveled

from the crime scene to the shelter in St. Paul in time for his 10:00 p.m. bed check using public transportation.

In the state's closing argument, the prosecutor emphasized Bolton's prior assaultive behavior. He suggested that Bolton's prior history with N.M. offered insight regarding why Bolton assaulted M.E. The prosecutor then directed the jury's attention to the criminal complaints and read portions of the complaints. He also reminded the jury that Bolton had been convicted for the 2006 incident. The district court did not provide a cautionary instruction limiting the jury's use of the evidence regarding Bolton's prior assaultive behavior.

The jury found Bolton guilty of second-degree assault. In a bifurcated sentencing proceeding, the jury found that Bolton was a danger to public safety. The district court entered judgment of conviction and sentenced Bolton to the statutory maximum penalty of 84 months in prison. Bolton appeals.

D E C I S I O N

I.

Bolton contends that the district court erred by admitting N.M.'s testimony and the related criminal complaints and criminal convictions as relationship evidence under Minn. Stat. § 634.20. Bolton argues that this court should review the district court's decision for an abuse of discretion. *See State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014) (providing that appellate courts reverse an evidentiary ruling only when there is an abuse of discretion).

The state responds that this court should apply the invited-error doctrine because Bolton explicitly agreed to the admission of the evidence that he now challenges. "The

invited error doctrine prevents a party from asserting an error on appeal that he invited or could have prevented in the court below.” *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007). Its purpose is to prevent defendants from raising their own trial strategy as a basis for reversal, *id.*, and to discourage litigants from intentionally creating appealable issues, *State v. Benton*, 858 N.W.2d 535, 540 (Minn. 2015). However, the invited-error doctrine does not prevent review of plain error. *Goelz*, 743 N.W.2d at 258. Thus, the state acknowledges that the alleged evidentiary error in this case is subject to plain-error review, even if the invited-error doctrine applies.

Because we ultimately conclude that Bolton has met his burden to show that he is entitled to relief under the plain-error standard, we do not determine whether the invited-error doctrine applies in this case.

The Plain-Error Standard

Generally, a defendant forfeits appellate review of an evidentiary issue if he failed to preserve the issue with an objection at trial. *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). However, an appellate court may review an unobjected-to error for plain error. *Id.* at 649-50. To obtain relief under the plain-error standard, a defendant must demonstrate that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If the defendant meets those three requirements, then this court will grant a new trial only if it is “necessary to ensure fairness and the integrity of judicial proceedings.” *Id.* at 742; *cf.* *United States v. Atkinson*, 297 U.S. 157, 160, 56 S. Ct. 391, 392 (1936) (stating that, in

“exceptional circumstances,” appellate courts may take notice of errors that “seriously affect the fairness, integrity or public reputation of judicial proceedings”).

Error that Was Plain

An error is plain “if it is ‘clear’ or ‘obvious,’ which is typically established ‘if the error contravenes case law, a rule, or a standard of conduct.’” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quoting *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006)). The state concedes that evidence regarding Bolton’s prior assaultive behavior was erroneously admitted as relationship evidence under Minn. Stat. § 634.20. The state further concedes that the erroneous admission of that evidence was plain. For the reasons that follow, we agree.

Evidence of another crime, wrong, or act is not admissible to prove the character of a person to show that the person acted in conformity with that character. Minn. R. Evid. 404(b)(1); *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). But such evidence of prior bad acts may be admissible for other purposes, such as “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Minn. R. Evid. 404(b)(1). In a criminal prosecution, evidence of prior bad acts is inadmissible unless five requirements are met:

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove;
- (3) there must be clear and convincing evidence that the defendant participated in the prior act;
- (4) the evidence must be relevant and material to the state’s case; and
- (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Ness, 707 N.W.2d 676, 685-86 (Minn. 2006); see Minn. R. Evid. 404(b)(2).

The state did not attempt to satisfy the admission requirements of rule 404(b). Instead, the state offered, and the district court admitted, the evidence regarding Bolton's prior assaultive behavior, criminal complaints, and criminal convictions under Minn. Stat. § 634.20. That statute allows the introduction of relationship evidence without requiring compliance with the procedural requirements of rule 404(b). *See State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (adopting Minn. Stat. § 634.20 as a rule of evidence separate from the requirements of rule 404(b)). Minn. Stat. § 634.20 provides, "Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible," unless it should be excluded for reasons provided in the statute. "Domestic conduct" includes, among other things, "evidence of domestic abuse." Minn. Stat. § 634.20.

Caselaw clearly provides, "Evidence is admissible under Minn. Stat. § 634.20 . . . only when the charges being tried include a charge constituting domestic abuse." *State v. McCurry*, 770 N.W.2d 553, 555 (Minn. App. 2009), *review denied* (Minn. Oct. 28, 2009). Thus, the state cannot use section 634.20 to admit evidence of prior bad acts unless it has charged the defendant with a crime that constitutes domestic abuse. *Id.* at 561. Domestic abuse is a crime "committed against a family or household member by a family or household member." Minn. Stat. § 518B.01, subd. 2(a) (2018); *see also* Minn. Stat. § 634.20 (incorporating that definition of domestic abuse). A family or household member includes persons who are related, who are residing or have resided together, and who are involved in a significant romantic or sexual relationship. Minn. Stat. § 518B.01, subd. 2(b) (2018).

The underlying charge in this case does not constitute domestic abuse because Bolton and M.E. were not family or household members. Because the state did not charge Bolton with a crime constituting domestic abuse, Minn. Stat. § 634.20 was inapplicable.² The district court therefore plainly erred by admitting evidence regarding Bolton’s prior assaultive behavior, criminal complaints, and criminal convictions as relationship evidence under Minn. Stat. § 634.20, thereby allowing the state to circumvent the procedural requirements of Minn. R. Evid. 404(b)(2).³

Error Affected Substantial Rights

We next consider whether the plainly erroneous admission of evidence regarding Bolton’s prior assaultive behavior, criminal complaints, and criminal convictions affected his substantial rights. *See Griller*, 583 N.W.2d at 740. The defendant has the burden of showing that 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). This court’s substantial-rights analysis under the plain-error standard

² Accordingly, defense counsel’s written objection to the state’s proffered relationship evidence stated that the defense opposed “the introduction of ‘relationship evidence’ under Minn. Stat. § 634.20 as this case IS NOT a domestic assault prosecution and ‘[w]hen the state cannot charge a crime constituting domestic abuse, it may not use [section] 634.20 to circumvent rules of admissibility for prior bad acts.’” (Quoting *McCurry*, 770 N.W.2d at 561.)

³ Bolton additionally argues that the admission of evidence regarding his prior convictions violated Minn. R. Evid. 609 (governing impeachment by prior conviction) and that the admission of the criminal complaints violated Minn. R. Evid. 802 (providing that hearsay is generally inadmissible) and the Confrontation Clause of the Sixth Amendment of the United States Constitution. Because we have concluded that evidence regarding Bolton’s prior convictions and criminal complaints was erroneously admitted under Minn. Stat. § 634.20, we do not discuss Bolton’s additional theories of error.

is “the equivalent of a harmless error analysis.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). Factors that an appellate court considers in determining whether erroneously admitted evidence was harmless include: (1) whether the state presented other evidence on the issue for which the evidence was offered, (2) whether the district court included a cautionary instruction on the use of the evidence, (3) whether the state dwelled on the evidence during the closing argument, and (4) whether the evidence of guilt was overwhelming. *State v. Riddley*, 776 N.W.2d 419, 428 (Minn. 2009).

As to the first factor, the state did not present other admissible evidence regarding Bolton’s prior assaultive behavior, criminal complaints, or criminal convictions. Indeed, the state failed to establish that such evidence was relevant to any issue in the case. This factor therefore weighs in favor of a new trial. As to the second factor, the district court did not provide a cautionary instruction limiting the jury’s use of the evidence. Indeed, the state did not establish that the erroneously admitted evidence could be used for any proper purpose. Thus, there was a risk that the jury would improperly rely on it to conclude that Bolton acted in conformity with his prior assaultive behavior. See Minn. R. Evid. 404(b)(1). Because the district court did not provide a cautionary instruction limiting the potential prejudice of the erroneously admitted evidence, this factor weighs in favor of a new trial.

As to the third factor, the prosecutor heavily emphasized the erroneously admitted evidence during his closing argument. His statements regarding the prior assaults took up nearly three pages of the 22-page closing-argument transcript and occurred near the end of the argument. The prosecutor speculated as to why Bolton assaulted M.E. and invited the

jury to consider whether his prior assaultive behavior provided an explanation. He then read portions of the criminal complaints, making no attempt to redact any information. He explained to the jury that Bolton struck N.M.'s sister's boyfriend in the head with a metal pole, struck N.M. with a fan, assaulted N.M.'s sister and ten-year-old niece, threw a full beer can at N.M. and lacerated her face, and punched N.M. and her family members in their faces. Finally, the prosecutor concluded that the assault of M.E. and the prior assaults shared a "commonality"—intoxication—and argued that Bolton's history of assaults showed his motive for the assault against M.E.

In sum, the reference to Bolton's assaultive behavior was not a brief, offhand remark; it was a concerted strategy. Because the prosecutor dwelled on the erroneously admitted evidence during his closing argument and asked the jury to rely on that evidence in determining whether Bolton assaulted M.E., this factor strongly weighs in favor of a new trial.

As to the fourth factor, the state's case was strong, but the evidence of guilt was not overwhelming. Three witnesses testified regarding the alleged stabbing, but there were credibility issues. One witness admitted that she did not see Bolton stab M.E., and M.E. testified that he was smoking marijuana shortly before it occurred. Furthermore, Bolton presented evidence supporting his alibi defense. One witness testified that Bolton was watching football at the shelter in St. Paul around the time of the alleged crime, and there was evidence that Bolton was present at the shelter by 10:00 p.m. that night. Bolton relied on bus schedules to argue that he could not have traveled from the alleged crime scene in Minneapolis at approximately 8:30 p.m. to the shelter in St. Paul by 10:00 p.m. using public

transportation. On this record, we cannot say that the evidence of guilt was overwhelming.⁴ This factor therefore weighs in favor of a new trial.

In sum, the erroneously admitted evidence was extensive. It included testimony describing Bolton's assaults of four other people on three other occasions, criminal complaints describing those assaults in detail, and Bolton's conviction history. The state heavily emphasized that evidence at trial and argued to the jury that Bolton's prior assaults provided a basis to conclude that he had assaulted M.E. Lastly, Bolton presented a plausible alibi defense. On this record, there is a reasonable likelihood that the evidence regarding Bolton's history of assaultive behavior and convictions impacted the jury's decision to believe the state's witnesses and to reject Bolton's alibi defense. Bolton has met his burden to show that there is a reasonable likelihood that the absence of error would have had a significant effect on the jury's verdict.

Fairness and Integrity of Judicial Proceedings

Even if a plain error affected a defendant's substantial rights, an appellate court will not grant a new trial unless the error seriously affected the fairness and integrity of judicial proceedings. *Griller*, 583 N.W.2d at 742. This rule authorizes appellate courts to correct only "particularly egregious errors" in which a "miscarriage of justice would otherwise result." *State v. Huber*, 877 N.W.2d 519, 528 (Minn. 2016) (quotations omitted).

The prosecutor is a "minister of justice whose obligation is to guard the rights of the accused as well as to enforce the rights of the public." *State v. Salitros*, 499 N.W.2d 815,

⁴ At oral argument to this court, the state acknowledged that Bolton presented a "strong" alibi defense.

817 (Minn. 1993) (quotation omitted). The district court is an “administrator of justice and has an affirmative obligation to keep counsel within bounds.” *Id.* We appreciate that the district court must remain objective and cannot advocate for a pro se defendant. But there comes a point at which the state’s introduction of inadmissible, prejudicial evidence justifies a district court’s intervention in an effort to avoid plain error. *Cf. id.* (stating that the district court has the “obligation of raising on [its] initiative, at all appropriate times and in an appropriate manner, matters which may significantly promote a just determination of the trial” (quotation omitted)). In this case, that line was crossed.

We recognize that Bolton did not object to the evidence and that he agreed to its admission. If Bolton had actually used the evidence as part of his defense strategy—indicating that his concession was strategic—we would view the case differently. But given the record before us, in which the state offered and relied on clearly inadmissible, extensive, prejudicial evidence regarding Bolton’s history of assaultive behavior, and Bolton did not use that evidence to his advantage in any way, we conclude that the erroneously admitted evidence seriously affected the fairness and integrity of Bolton’s trial. We therefore reverse his conviction of second-degree assault.

II.

Bolton raises additional issues in a pro se supplemental brief. Given our decision to reverse his conviction, only one of those issues is material: Bolton’s suggestion that the evidence was insufficient to sustain his conviction.⁵

⁵ We nonetheless note that we have reviewed Bolton’s remaining assertions of error, which allege ineffective assistance of counsel and a *Brady* violation, and conclude they are

Retrial is not barred if a conviction is reversed based on trial error. *State v. Harris*, 533 N.W.2d 35, 36 (Minn. 1995). But the Double Jeopardy Clause of the United States Constitution precludes retrial if a conviction is set aside because the evidence supporting it is legally insufficient. *State v. Cox*, 779 N.W.2d 844, 853 (Minn. 2010). Having concluded that the plain evidentiary error in this case justifies reversal, we next consider whether the evidence was sufficient to sustain the conviction such that the Double Jeopardy Clause does not preclude a new trial. “A reviewing court considers all of the evidence admitted by the [district] court, whether erroneously admitted or not, in deciding whether retrial is permissible under the Double Jeopardy Clause.” *Id.*

When evaluating the sufficiency of the evidence, appellate courts “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). Appellate courts assume that the jury believed the state’s witnesses and did not believe any evidence to the contrary, as the credibility of witnesses is for the jury to determine. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

Bolton was convicted of second-degree assault under Minn. Stat. § 609.222, subd. 1, specifically, assault with a dangerous weapon. Two witnesses testified that they saw Bolton stab M.E. Bolton points out inconsistencies in the witnesses’ testimony and

without merit. See *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963) (holding that the prosecution’s suppression of evidence favorable to the defendant violates due process when the evidence is material to guilt or punishment); see also *Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting pro se arguments without detailed discussion).

emphasizes the evidence that supports his alibi defense. That approach is unavailing because this court assumes that the jury believed the state's witnesses and did not credit Bolton's evidence. *See Moore*, 438 N.W.2d at 108. We therefore conclude that the evidence was sufficient to sustain Bolton's conviction and that the Double Jeopardy Clause does not preclude a retrial.

Reversed and remanded.