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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1000**

Douglas Edward Simpson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 3, 2025
Affirmed
Bratvold, Judge**

Nobles County District Court
File No. 53-CR-19-717

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Braden M. Hoefert, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Considered and decided by Larson, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

This appeal is from an order denying appellant's petition for postconviction relief from a conviction for third-degree criminal sexual conduct. Appellant argues that his

conviction must be reversed because it was plain error to admit documentary evidence related to his guilty plea and sentence for another criminal-sexual-conduct conviction. We need not determine whether the admission of this documentary evidence was plain error because we conclude that any plain error in its admission did not affect appellant's substantial rights and did not undermine the fairness or integrity of the judicial proceedings. Thus, we affirm.

FACTS

In July 2019, respondent State of Minnesota charged appellant Douglas Edward Simpson with one count of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c) (2018), for an offense involving H.K. in May 2011.

Before trial, the state moved under Minn. R. Evid. 404(b) to admit evidence of Simpson's 2015 conviction for third-degree criminal sexual conduct. The state argued that the evidence was relevant to show "modus operandi and a common scheme or plan." The state also moved to "allow the State to impeach" Simpson with the same prior conviction if he testified, as permitted by Minn. R. Evid. 609.

At a hearing, Simpson's attorney opposed admitting evidence of the 2015 conviction. The prosecuting attorney argued to admit both victim testimony and documents relating to Simpson's 2015 conviction under rule 404(b). The prosecuting attorney added that, "if the evidence comes in" under rule 404(b), the district court "wouldn't necessarily have to address the impeachment issue." Following the hearing, the district court granted the state's motion, determining that evidence of Simpson's 2015 conviction was admissible under Minn. R. Evid. 404(b) to establish "a common scheme or plan." The district court

did not rule on the use of Simpson's prior conviction for impeachment under Minn. R. Evid. 609.

At Simpson's jury trial in June 2021, the state offered testimony from H.K. and four other witnesses who testified about H.K.'s statements and demeanor when she disclosed Simpson's sexual conduct. The prosecuting attorney also called M.H., the victim from Simpson's 2015 conviction. Simpson did not testify. The following summarizes the trial record relevant to the issue raised in postconviction proceedings.

H.K. testified that she dated Simpson while they both attended the same high school in a small town in Nobles County. At the time of the assault, both H.K. and Simpson were 15 years old.¹ After a softball game in May 2011, H.K. went to Simpson's home to shower. No one else was home at that time. When H.K. got out of the shower, Simpson opened the bathroom door. H.K. was undressed. Simpson picked H.K. up, brought her into a bedroom, and placed her "down on the bed." Simpson "pulled [H.K.'s] underwear down" and put "his mouth and tongue" on her "vaginal area." H.K. told Simpson to "stop." Simpson held H.K. down with "a pillow over [her] face." H.K. also testified that Simpson "slapped [her] private area."

Several years later, in 2014 and 2015, H.K. disclosed Simpson's assault to a mental-health counselor at her college, her college boyfriend, and her mother. In 2018,

¹ Although Simpson was a minor when these events occurred, the district court certified him as an adult offender. *See* Minn. Stat. § 260B.125, subd. 6 (2018) (providing that a district court has juvenile jurisdiction to hold a certification hearing when an adult is charged with an offense committed before the adult's 18th birthday).

H.K. reported the assault to the police. The counselor, college boyfriend, mother, and law-enforcement officer testified and corroborated H.K.'s statements to them.

Consistent with the district court's pretrial ruling, M.H. testified about events leading to Simpson's 2015 conviction. M.H. testified that, at that time, she was 15 years old and Simpson's friend. On June 24, 2015, she met Simpson at the high-school football field around 11:00 p.m. to talk about her recent breakup. They "sat around the 50-yard line in the middle" of the football field. While they were talking, M.H. started to cry and Simpson "pulled [M.H.] in for a hug," then kissed her. Simpson then "laid [her] down and straddled [her] body" so she "couldn't move." Simpson took off M.H.'s shorts and underwear and inserted "his fingers" into her. M.H. told Simpson to stop "multiple times." Simpson did not stop. Later, M.H. reported what happened to the police. M.H. testified that Simpson was charged with and pleaded guilty to third-degree criminal sexual conduct.

Before M.H. testified, the district court instructed the jury about how to consider the evidence.

Members of the jury, you are about to hear and receive evidence of occurrences on June 24th, 2015, at a football field This evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in this complaint. The defendant is not being tried for and may not be convicted of any offense other than the charged offense. You are not to convict the defendant on the basis of occurrences on June 24th, 2015, at the football field To do so might result in unjust double punishment.

After M.H. completed her testimony, the state offered exhibit 4, which included certified copies of Simpson's 2015 conviction documents. Simpson objected to the

criminal complaint in exhibit 4, which the district court sustained. He did not object to any other part of exhibit 4, the rest of which was received. As admitted, exhibit 4 included Simpson's plea petition, a sentencing order and warrant of commitment (first sentencing order), and an amended sentencing order and amended warrant of commitment (second sentencing order). The second sentencing order stated that Simpson violated probation by having contact with a person under the age of 18. After the admission of exhibit 4, both parties rested.

During final jury instructions, the district court stated: "You have heard evidence of an occurrence on June 24th—you have heard, and the Court has received documents regarding evidence of an occurrence on June 24th, 2015, at a football field." The district court then repeated the cautionary instruction it gave before M.H. testified.

The jury found Simpson guilty of third-degree criminal sexual conduct involving H.K., and the district court sentenced Simpson to 53 months in prison. Simpson did not file a direct appeal.

In July 2023, Simpson petitioned for postconviction relief; he did not request an evidentiary hearing. Simpson's postconviction petition and memorandum argued that he was entitled to a new trial because the district court plainly erred when it admitted "the plea petition and sentencing order from the 2015 offense." Simpson contended that exhibit 4 was "irrelevant, more prejudicial than probative, cumulative, constituted hearsay and improper impeachment, and erroneously presented sentencing considerations to the jury." To be clear, Simpson's postconviction memorandum did not argue that M.H.'s testimony was inadmissible under rule 404(b) but it did argue that the admission of exhibit 4 was

plain error because it did not “show a common plan or rebut fabrication” along with other reasons. The state opposed Simpson’s petition.

In a written order denying postconviction review, the district court determined that no plain error occurred in the admission of the plea petition and first sentencing order. But the district court determined that admitting the second sentencing order was plain error because it referred to Simpson’s probation violation, which “did not make any facts in issue at the trial more or less probable” and was more prejudicial than probative. The district court concluded, however, that Simpson’s substantial rights were not affected by the admission of the second sentencing order in exhibit 4, reasoning that it was “a small part of a larger admissible exhibit.”

Simpson appeals.

DECISION

Appellate courts “review a denial of a petition for postconviction relief . . . for an abuse of discretion.” *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation omitted).

Simpson argues that the district court abused its discretion by denying his postconviction petition because the district court plainly erred during trial when it admitted exhibit 4. Simpson’s brief to this court acknowledges that he did not object to exhibit 4 as admitted at trial and that “the ruling is therefore reviewed for plain error.”² “When a

² It is accurate that Simpson’s trial objection was limited to the criminal complaint involving M.H. and that he did not object to the documents admitted as exhibit 4.

defendant fails to object at trial, the forfeiture doctrine generally precludes appellate relief.” *State v. Lilienthal*, 889 N.W.2d 780, 784-85 (Minn. 2017). Appellate courts, however, have “a limited power to correct errors that were forfeited” when the district court committed plain error. *Pulczynski v. State*, 972 N.W.2d 347, 355-56 (Minn. 2022) (quotation omitted).

To meet the plain-error standard, “a defendant must establish (1) an error, (2) that is plain, and (3) that affects the defendant’s substantial rights.” *Id.* at 356. Before granting relief, an appellate court must also conclude that the “failure to correct the error” has “an impact beyond the current case by causing the public to seriously question the fairness and integrity of our judicial system.” *Id.*

A. Plain Error

“An error is plain if it was clear or obvious.” *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted). “Usually this is shown if the error contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

Simpson argues that the district court plainly erred by admitting exhibit 4 because it amounted to improper impeachment, was not relevant, was more prejudicial than probative, and was cumulative. The state argues that the plea petition and sentencing order were admissible under Minn. R. Evid. 404(b), were not otherwise inadmissible under

Simpson’s attorney opposed the state’s pretrial motion to admit evidence of the 2015 conviction under Minn. R. Evid. 404(b). At the pretrial hearing on the state’s motion, the prosecuting attorney described the evidence of the 2015 conviction as including documents related to Simpson’s 2015 conviction. The district court granted the state’s motion in a pretrial order. Simpson was not required to renew his pretrial objection to preserve error. Minn. R. Evid. 103(a). We agree with the parties that, because Simpson challenges exhibit 4’s admission on grounds that he did not raise before or during trial, we apply the plain-error standard of review.

rule 403, and were not offered or used as improper impeachment.³ The state’s brief to this court appears to accept implicitly the postconviction ruling that admission of the second sentencing order was plain error.

We briefly consider Simpson’s argument on the relevance of exhibit 4. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence.” Minn. R. Evid. 401. “All relevant evidence is admissible.” Minn. R. Evid. 402. Character evidence, however, is generally not admissible “for the purpose of proving action in conformity therewith on a particular occasion.” Minn. R. Evid. 404(a). But “[e]vidence of another crime, wrong, or act” 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).

Simpson argues that documents in exhibit 4 are not evidence of other “crimes, wrong, or acts” under Minn. R. Evid. 404(b) because they are evidence of a prior *conviction*, not prior “conduct.” This argument is not persuasive for two reasons. First, caselaw generally recognizes the relevance of prior criminal sexual conduct for the other purposes identified in rule 404(b). For example, the Minnesota Supreme Court has concluded that evidence of previous criminal sexual conduct may be admissible to show a common *modus operandi* in a subsequent criminal-sexual-conduct trial. *See State v.*

³ If a defendant testifies, evidence of a prior criminal conviction may be used for impeachment purposes, meaning “[f]or the purpose of attacking the credibility of a witness.” Minn. R. Evid. 609(a). Here, however, Simpson did not testify.

Washington, 693 N.W.2d 195, 198, 203 (Minn. 2005) (concluding that testimony about Washington’s previous sexual assault of a 15-year-old girl was admissible in Washington’s trial for sexually assaulting another 15-year-old girl several years later). This court has also upheld the admission of evidence of previous criminal-sexual-conduct convictions under rule 404(b). In doing so, we explained that, “[i]n criminal sexual conduct cases, prior sexual conduct convictions are often probative where the defendant disputes that the sexual conduct occurred or where the defendant asserts the victim is fabricating the allegations” because the “prior convictions are relevant to show a common plan or scheme.” *State v. Duncan*, 608 N.W.2d 551, 557 (Minn. App. 2000) (concluding that the district court did not abuse its discretion by admitting evidence of Duncan’s “five prior criminal sexual conduct convictions”), *rev. denied* (Minn. May 16, 2000).

Second, the supreme court has upheld the admission of a certified copy of court records to show a defendant’s prior criminal sexual conduct. The supreme court reasoned that documentary evidence of “a prior conviction is obviously the most efficient method of proof of a prior offense under Rule 404(b).” *State v. Crocker*, 409 N.W.2d 840, 843-44 (Minn. 1987) (quotation omitted) (concluding that “it was entirely proper for the [district] court to allow the state to use certified court records to prove” a prior criminal-sexual-conduct conviction and affirming the district court’s admission of testimony that Crocker attempted to sexually assault his 15-year-old stepdaughter). The supreme court added, however, that sometimes “the conviction will not reveal the facts concerning the prior crime that are relevant in the instant case and, in such a case, the party proving the other crime will want to call witnesses.” *Id.* at 844 (quotation omitted).

Simpson emphasizes that the district court plainly erred by admitting exhibit 4 under Minn. R. Evid. 403. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice” or based on concerns about the “needless presentation of cumulative evidence.” Minn. R. Evid. 403. Specifically, Simpson argues that exhibit 4 was more prejudicial than probative. Simpson contends that the information contained in exhibit 4 was already elicited through M.H.’s testimony so it was unnecessarily cumulative and that “the danger for unfair prejudice was substantial” because (1) the plea petition refers to two counts of sexual misconduct, which could confuse the jury, (2) the plea petition states that Simpson was “treated by a psychiatrist or other person for a nervous or mental condition,” (3) the plea petition states that Simpson had to register as a predatory offender, and (4) the first sentencing order includes Simpson’s probation condition that he participate in a psychosexual evaluation.

Simpson’s brief to this court does not cite any caselaw holding that a district court plainly erred by admitting documentary evidence of a prior criminal-sexual-conduct conviction. Still, we need not decide whether the district court plainly erred by admitting exhibit 4 if Simpson’s challenge fails on the third and fourth steps of plain-error review. We therefore consider Simpson’s arguments on those issues.

B. Any plain error in admitting exhibit 4 did not affect Simpson’s substantial rights.

Simpson contends that his substantial rights were affected by the error and that the district court abused its discretion in concluding otherwise. An error affects substantial rights “if the error was prejudicial and affected the outcome of the case.” *State v. Griller*,

583 N.W.2d 736, 741 (Minn. 1998). An error is prejudicial “if there is a reasonable likelihood that the error substantially affected the verdict.” *Strommen*, 648 N.W.2d at 688. This is “the equivalent of a harmless error analysis.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). When conducting a harmless-error analysis, appellate courts determine whether there is “a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Bigbear*, 10 N.W.3d 48, 55 (Minn. 2024) (quotation omitted). When “assessing whether an error is harmless, the question is not whether the other evidence was *sufficient* to support the conviction, but rather whether the error substantially influenced the verdict.” *Id.* at 54 (quotation omitted).

Appellate courts consider several “[n]on-exclusive factors . . . to determine whether a reasonable possibility exists that the erroneously admitted evidence significantly affected the jury’s verdict.” *Id.* These factors include “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020). Appellate courts also consider whether there is “[s]trong evidence of guilt” that “undermines the persuasive value of wrongly admitted evidence.” *Id.* We consider each factor in turn.⁴

⁴ In its postconviction decision, the district court considered different factors under *State v. Riddley*, 776 N.W.2d 419, 428 (Minn. 2009). We apply the factors set out in *Smith*, as the Minnesota Supreme Court instructed in *Biggear*, 10 N.W.3d at 54-55.

How the Evidence Was Presented

We first consider the manner in which the state presented exhibit 4. Even though Simpson's brief to this court cites the *Smith* factors, Simpson does not address this factor. The state argues that "[e]xhibit 4 was introduced without fanfare or flourish after M.H. testified" and "was not published to the jury." The state also argues that any prejudice "was substantially mitigated" because the trial court "gave a limiting instruction" for the jury "about the proper use of the evidence."

The postconviction order states that the "offending documents were a small part of a larger admissible exhibit[;] the prosecution did not rely on the documents or call attention to them." We agree with this description. Although exhibit 4 was admitted into evidence, the trial transcript reflects that the prosecuting attorney did not discuss its contents during opening statements or closing arguments. The district court also gave a cautionary instruction before M.H.'s testimony and the admission of exhibit 4 as well as before deliberations. The final instruction referred to "documents regarding evidence of an occurrence on June 24th, 2015, at the football field" and instructed the jury that the evidence was "admitted for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in this complaint" and that the jury was "not to convict the defendant on the basis of any occurrences" described in exhibit 4 and M.H.'s testimony. Appellate courts "assume that the jury followed the court's instructions and properly considered the evidence." *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). We conclude that this factor weighs in favor of

determining that any plain error in admitting exhibit 4 did not affect Simpson's substantial rights.

The Persuasiveness of the Erroneously Admitted Evidence

We next consider the persuasiveness of exhibit 4. During postconviction proceedings, the district court reasoned that H.K.'s credibility was the focus at trial. Simpson argues that exhibit 4 "was persuasive because it contained negative-character inferences showing that Simpson violated probation by having unsanctioned contact with a minor."

As noted above, the specific content of exhibit 4 was never discussed during trial. Additionally, the persuasive value of exhibit 4 was limited, given M.H. testified that Simpson pleaded guilty to assaulting her and was convicted. We therefore conclude that this factor weighs in favor of a determination that any plain error in admitting exhibit 4 did not affect Simpson's substantial rights.

How the Evidence Was Discussed During the State's Closing Argument

During postconviction proceedings, the district court determined that the state "made no reference to, nor drew the jury's attention to, the plea petition or sentencing orders" during closing arguments. Simpson does not discuss this factor in his brief to this court. The state argues that the prosecuting attorney "did not refer to [exhibit 4] or its details in her closing argument" and that the prosecuting attorney "reminded the jury of the proper use of" exhibit 4 by stating that the jury should not use exhibit 4 "as character or propensity evidence."

We agree that the prosecuting attorney did not refer to exhibit 4 during closing argument, focused on H.K.'s testimony, and discussed M.H.'s testimony briefly. Before discussing M.H.'s testimony, the prosecuting attorney reminded the jury that "[t]he purpose of [M.H.'s] testimony was to show you the similarities between how the defendant acted with both victims" and not to show that "because [Simpson] did this to [M.H.] . . . he also must have done it this time to [H.K.]." Therefore, this factor weighs in favor of determining that any plain error in admitting exhibit 4 did not affect Simpson's substantial rights.

Whether the Defense Effectively Countered the Evidence

Simpson argues that he was unable to counter exhibit 4 "without drawing more attention to it." The state does not address this factor in its brief to this court. During closing argument, Simpson's attorney noted that Simpson pleaded guilty to the 2015 criminal-sexual-conduct charge and "[t]hat is not the question that you have to decide today." Simpson's attorney did not discuss M.H.'s testimony during closing argument. Still, we conclude that Simpson had few, if any, options to counter exhibit 4 specifically. Thus, this factor weighs in favor of determining that any plain error in admitting exhibit 4 affected Simpson's substantial rights.

Evidence of Simpson's Guilt

Finally, we assess whether there is "[s]trong evidence of guilt" that "undermines the persuasive value of [the] wrongly admitted evidence." *Smith*, 940 N.W.2d at 505. During postconviction proceedings, the district court acknowledged that there was not "overwhelming" evidence of Simpson's guilt for the offense against H.K., that the case

“rested largely on the jury’s determination of H.K.’s credibility,” and that M.H.’s testimony, corroborated by exhibit 4, “was a strong piece of evidence to bolster H.K.’s credibility.”

Our review of the evidence leads us, nonetheless, to determine that the evidence of Simpson’s guilt is strong. H.K. testified in detail about the assault. Testimony from her counselor, college boyfriend, mother, and the law-enforcement officer corroborated her disclosures of the assault, even though H.K. did not report the assault for years and no physical evidence corroborated her testimony. Also, M.H.’s testimony showed a common plan or scheme that bolstered H.K.’s credibility, and the admission of M.H.’s testimony is not challenged on appeal. As a result, this factor favors determining that any plain error in admitting exhibit 4 did not affect Simpson’s substantial rights.

Considering the *Smith* factors as a whole, we conclude that the evidence of Simpson’s guilt was strong, but not overwhelming, and that Simpson was not able to effectively counter exhibit 4. Still, the manner in which exhibit 4 was admitted raises no concerns because the prosecuting attorney did not discuss its contents. The persuasiveness of exhibit 4 was limited, given M.H.’s testimony, that the prosecuting attorney did not mention exhibit 4 during closing arguments, and that the district court gave cautionary instructions to the jury explaining the appropriate use of exhibit 4.

Thus, we conclude that any plain error in admitting exhibit 4 did not affect Simpson’s substantial rights and that there was no reasonable likelihood that any plain error in admitting exhibit 4 substantially affected the verdict.

C. Any plain error in admitting exhibit 4 did not undermine the fairness and integrity of the judicial proceedings.

In the interest of being thorough, we consider the final step in the plain-error analysis. Relief for plain error may be granted only when “a failure to correct the error would have an impact beyond the current case by causing the public to seriously question the fairness and integrity of our judicial system.” *Pulczynski*, 972 N.W.2d at 356.

During postconviction proceedings, the district court determined that “[o]n this record there is no basis for concluding that the error seriously affected the fairness, integrity or public reputation of the proceedings.” Simpson’s brief to this court argues that “[t]he fairness and integrity of the judicial proceedings are undermined when convictions are based on inadmissible evidence” without citing legal authority or providing further explanation. The state argues that Simpson does not sufficiently raise this issue because he did not cite any legal authority in support of his argument.

We have already concluded that the admission of exhibit 4 did not affect Simpson’s substantial rights. Here, Simpson does not argue why the admission of exhibit 4 affects the fairness and integrity of our judicial system. The Minnesota Supreme Court has declined to exercise its discretion under the plain-error doctrine when an appellant made “no argument that a failure to correct [an error] will seriously affect the fairness, integrity, or public reputation of judicial proceedings generally” and the court “perceive[d] no reason why a failure to correct the alleged error will cause the public to seriously question the fairness and integrity of our judicial system.” *Id.* at 360. We conclude that nothing in the

record suggests that any plain error in admitting exhibit 4 undermined the fairness and integrity of judicial proceedings.

For all of these reasons, we conclude that the district court did not abuse its discretion by denying Simpson's petition for postconviction review.

Affirmed.