STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1179

State of Minnesota,
Respondent,

vs.

Juan Francisco Martinez,
Appellant.

Filed June 4, 2012
Affirmed
Kalitowski, Judge
Dissenting, Randall, Judge[*]

Clay County District Court
File No. 14-CR-10-2404

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Lawson, Acting Clay County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Schellhas, Judge; and Randall, Judge.

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

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

KALITOWSKI, Judge

Appellant Juan Francisco Martinez challenges his conviction of second-degree assault with a dangerous weapon causing substantial bodily harm. Appellant argues that the district court erred by admitting into evidence (1) excerpts of letters appellant had written in jail; and (2) a knife that was found in appellant's possession when he was apprehended. We affirm.

FACTS

E.L. and three others drove to appellant's mother's trailer home in Moorhead at about 2:30 a.m. on July 3, 2010. A conversation between E.L. and appellant degenerated into an argument. Eventually the two men began to wrestle and fight and appellant swung at E.L. twice with his fist. E.L. heard a strange noise after appellant's second swing, and looked down to find that he had been stabbed in the abdomen and his intestines were distended. Appellant's mother then hit E.L. in the face while appellant fled the scene. E.L.'s sister rushed him to the hospital for emergency medical treatment.

Police officers apprehended appellant at a motel in West Fargo, North Dakota, on July 6, 2010. A duffle bag in appellant's hotel room contained a folding knife. Appellant was charged with one count of second-degree assault in violation of Minn. Stat. § 609.222, subd. 2 (2008). Appellant resided in Cass County jail pending trial. While there, he wrote more than 850 pages of letters to family and friends.

The district court conducted a two-day jury trial on February 8 and 9, 2011. The state called six witnesses: victim E.L.; the victim's sister E.B.; the emergency-room

physician who treated E.L.; the trauma surgeon who treated E.L.; a police detective who responded to the fight; and a police detective who investigated the stabbing.

Over appellant's objection, the state attempted to introduce into evidence 13 excerpts of letters that appellant had written while at the Cass County jail. The district court admitted two of the excerpts into evidence as party admissions.

The first excerpt is from a letter that appellant apparently wrote to a friend. It reads:

> They don't really got sh-t on me. They don't have a knife, so there's no weapon linking me to it. That b-tch [E.B.] says I did it and [E.L.] said I did but neither one of them can describe the [k]nife or even say they seen a knife in my hand! No one seen a knife in my hand the whole time and everyone was right there. Plus I'm gonna call my witnesses that'll confirm there was never a knife in my hand. The only thing they're going to try and win by is circumstantial evidence. Which is that me and him were the only ones fighting. So no one else would have motive to stabb [E.L.]. But we're going to tear that sh-t up in court cuz we got a defense for that too! I'm innocent lil' Homie which I'm sure you know.

The second excerpt is from a letter that appellant wrote to his mother and brother. It reads:

> Like I told Johnny ya'll both won't be able to be present during the trial so make sure ya'll got your stuff straight! Also you might wanna have some one there to let you know how I'm holding up and how everything is going. And have you made it clear to your best friend's girl and the other what I told you to say. Or have they left town yet? I'm extremely nervous I can't afford any mistakes.

The state also introduced the knife that the officers discovered in a duffle bag at appellant's hotel room. Appellant objected in a pretrial motion in limine that the knife is

irrelevant because its use in the stabbing cannot be proved, and alternatively, even if the knife is relevant, its probative value is substantially outweighed by the danger of unfair prejudice. The district court admitted the knife into evidence over these objections, stating that the parties are free to argue the knife's value in light of the fact that there is no forensic evidence linking the knife to the attack.

The jury found appellant guilty of second-degree assault with a dangerous weapon causing substantial bodily harm. Appellant received an executed sentence of 46 months in prison. Appellant challenges his convictions and requests a new trial.

D E C I S I O N

I.

Appellant argues that the district court committed reversible error by admitting the letter excerpts into evidence. Specifically, appellant contends that the excerpts are irrelevant, or more prejudicial than probative, or they inappropriately comment on his decision not to call witnesses.

"Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted).

Relevance

Only relevant evidence is admissible at trial. Minn. R. Evid. 402. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable

than it would be without the evidence." Minn. R. Evid. 401. "A fact is relevant if, when taken alone or in connection of other facts, warrants a jury in drawing a logical inference assisting, even though remotely, the determination of the issue in question." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). "The convincing power of that inference is for the jury to determine." *Id.*

Here, the first excerpt has relevance because appellant reviewed the state's circumstantial evidence and contemplated his possible motive for stabbing E.L.: "me and him were the only ones fighting. So no one else would have motive to stabb [E.L.]." "Motive is not an element of most crimes, but the state is usually entitled to prove motive because motive explains the reason for an act and can be important to a required state of mind." *State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006) (quotation omitted). Thus, the excerpt is relevant to the charged offense because evidence of appellant's motive may help the jury determine whether or not appellant stabbed E.L. *See* Minn. R. Evid. 401; *Schulz*, 691 N.W.2d at 478. The excerpt also indicates appellant's belief that appellant and E.L. were the only two people fighting, which is relevant because appellant's defense theory implicated another person as the perpetrator.

Appellant wrote in the second excerpt: "[H]ave you made it clear to your best friend's girl and the other what I told you to say. . . . I'm extremely nervous I can't afford any mistakes." Because this statement could reasonably be interpreted to reflect appellant's consciousness of guilt, it is relevant in assisting the jury determine whether appellant stabbed E.L.

Because the excerpts are relevant, we conclude that the district court's acceptance of them into evidence was not "a clear abuse of discretion." *Amos*, 658 N.W.2d at 203.

Prejudice

Appellant claims that, even if the evidence is relevant, it is prejudicial and should be excluded by Minn. R. Evid. 403. Specifically, appellant claims that non-redacted profanity in the letter "increased the potential of jury hostility and prejudice toward [appellant] because it cast him as insulting and unlikeable." Only the first excerpt contains profanity.

Appellant did not object on these grounds in the district court. "When a defendant fails to object to an alleged error at trial, we review for plain error." *State v. Hill*, 801 N.W.2d 646, 654 (Minn. 2011).

> [B]efore an appellate court reviews an unobjected-to error, there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.

State v. Ramey, 721 N.W.2d 294, 298 (Minn. 2006) (quotation omitted).

Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 403. "The rule favors admission of relevant evidence, as the probative value of the evidence must be 'substantially' outweighed by

prejudice, confusion of the issues, and the other dangers listed in the rule." *Schulz*, 691 N.W.2d at 478 (quoting Minn. R. Evid. 403).

Appellant cites no legal authority for his prejudice argument regarding the profanity. And we reject appellant's claim that the relatively mild profanity in the first excerpt was likely to prejudice the jury. Thus, we conclude that the excerpt's relevancy is not substantially outweighed by unfair prejudice against the defendant.

Commentary on appellant's decision not to call witnesses

Appellant argues that because the first excerpt references possible witnesses, it "impermissibly shifted the jury's perception of the burden of proof and likely created an assumption that [appellant] did not call the promised witnesses to testify at trial because the witness's purported testimony was not helpful to the defense." Because appellant did not make this argument in the district court, review by this court proceeds under plain-error analysis. *Hill*, 801 N.W.2d at 654.

A prosecutor commits error by commenting on a defendant's failure to call witnesses. *State v. McDaniel*, 777 N.W.2d 739, 750 (Minn. 2010); *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993). But the prosecutor in this case never commented on appellant's decision not to call witnesses. Appellant is arguing that his own writing is inadmissible because it mentions prospective witnesses. There is no supporting authority for this proposition.

Moreover, even if the district court erred by admitting the excerpt, corrective instructions can cure certain kinds of error. *State v. Race*, 383 N.W.2d 656, 664 (Minn. 1986); *State v. Caldwell*, 322 N.W.2d 574, 590 (Minn. 1982). Here, the district court

gave the following jury instructions regarding the burden of proof: "The defendant has no obligation to prove innocence. The defendant has the right not to testify. This right is guaranteed by the federal and state constitutions. You should not draw any inference from the fact that the defendant has not testified in this case." Appellate courts presume that juries follow instructions given by the district court. *State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010). These instructions, along with the fact that the state never commented on appellant's decision not to call witnesses, further establish that there is no reversible error.

II.

Appellant argues that because the knife was irrelevant, the district court committed reversible error by accepting it into evidence. We disagree.

"Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced." *Amos*, 658 N.W.2d at 203.

Relevance

Proof that a defendant possessed a weapon capable of being used in the commission of the crime is sufficient to render the weapon relevant and admissible. *State v. Kotka*, 277 Minn. 331, 341, 152 N.W.2d 445, 452 (1967). In *Kotka*, detectives investigating a three-day-old murder discovered that the defendant possessed a .32-caliber gun. *Id.* at 335-37, 341, 152 N.W.2d at 448-50, 452. A ballistics expert concluded that the victim was shot by a .32-caliber gun, but he could not positively

declare that the defendant's specific gun fired the bullets. *Id.* at 338, 152 N.W.2d at 450. The district court admitted the gun into evidence, and the defendant appealed his conviction. *Id.* at 332, 333, 152 N.W.2d at 446-47. The supreme court affirmed, holding that the inconclusive ballistics evidence "affected only the weight and not the admissibility of the gun as evidence." *Id.* at 341, 152 N.W.2d at 452. The supreme court concluded that "there is no question that [the victim] died from .32-caliber bullet wounds and that defendant possessed a gun specifically capable of firing bullets of that caliber." *Id.*

Appellant relies on *State v. Lubenow* for the argument that because there was no evidence connecting the knife to the crime, it was not relevant. 310 N.W.2d 52, 56 (Minn. 1981). In *Lubenow*, a murder victim's internal organs were punctured by long, narrow, and very sharp instruments that were 20 to 23 inches long and had the diameter of a pencil. *Id.* at 53. The district court admitted into evidence hunting arrows discovered in defendant's car, and the defendant was convicted. *Id.* at 56. A doctor testified that arrows could have caused the victim's injuries, but many other types of instruments could have also made the injuries. *Id.* The supreme court held that the arrows were not relevant and were improperly admitted at trial. *Id.*

This case is distinguishable because, unlike in *Lubenow* where there was no supporting evidence that arrows caused the victim's injuries, the record here indicates E.L. was stabbed and contains specific evidence referencing a knife. Both E.L. and E.B. testified that they saw appellant stab E.L. Although E.L. and E.B. both explained that they did not see a knife because it was dark, the trauma surgeon testified that a sharp

instrument caused E.L.'s injury. And appellant's own letter references a knife. He anticipated E.L. and E.B.'s testimony, and stated "neither one of them can describe the [k]nife or even say they seen a knife in my hand!" In light of this evidence, we conclude that the district court did not abuse its discretion in determining that the knife was relevant and admissible.

Prejudice

Even if the district court erred in admitting the knife, appellant has the burden of proving that he was prejudiced by the admission. *Amos*, 658 N.W.2d at 203. "On appeal, a defendant has the burden of proving not only that the district court abused its discretion in admitting the evidence in question, but also that he was prejudiced by the admission of the evidence." *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). "Under the harmless error standard, a defendant who alleges an error that does not implicate a constitutional right must prove there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (quotation omitted).

Appellant argues that if the knife had not been admitted, "jurors may have been more hesitant to convict [appellant] since no assault weapon was found in his possession and no witness put a knife in his hand at the scene." We disagree.

The evidence against appellant is overwhelming. At trial, E.L. testified that he had been fighting with appellant, that appellant swung his fist at him, and immediately thereafter, E.L.'s intestines distended from his body. The trauma surgeon testified that a sharp instrument caused E.L.'s injury. E.L. and his sister both testified that the only other

person to strike E.L. was appellant's mother, who hit him in the face after the stabbing. Thus, even without the knife in evidence, the record would have provided the jury with evidence that appellant struck E.L. with some type of sharp instrument that caused him to suffer substantial bodily harm. *See* Minn. Stat. § 609.222, subd. 2.

We conclude that appellant has not shown that there is a reasonable possibility that the admission of the knife into evidence significantly affected the verdict. *See Matthews*, 800 N.W.2d at 633. Thus, even if the district court erred by admitting the knife, the error is harmless.

Affirmed.

RANDALL, Judge (dissenting)

I respectfully dissent and would reverse the conviction based on the error in admitting the knife found in appellant's duffel bag three days after the incident. Without testimony establishing that E.L.'s injury was caused by a knife, the probative value of the knife being found in appellant's possession was overwhelmed by the prejudicial effect of tying appellant to a dangerous weapon.

There was abundant evidence that appellant and E.L. fought on the night of the offense, as appellant admitted in the letters introduced into evidence. But there was only E.L.'s testimony to show that appellant "stabbed" him, and E.L. admitted that he did not see a knife in appellant's hand. Neither did any of the eyewitnesses. And the trauma surgeon who treated E.L.'s wound *specifically declined* to testify that that wound was caused by a knife. When police found a folding knife in appellant's possession three days later, there was no evidence on it connecting it to E.L.'s wound. Thus, the only probative value in introducing the knife was the speculative inference that it *could* have been the weapon with which E.L. was assaulted.

As the cases cited by the majority demonstrate, minimal probative value is insufficient to justify admission of a weapon, with its inherent prejudicial effect.

The majority relies on *State v. Kotka*, 277 Minn. 331, 341, 152 N.W.2d 445, 452 (1967), in which the supreme court affirmed the admission of a gun capable of firing bullets (.32 caliber) of the same caliber as those that killed the victim. The *Kotka* court stated that "proof that defendant possessed the type of weapon or instrumentality with which the crime was committed is sufficient to make the weapon admissible." *Id. Kotka*

helps appellant here. In *Kotka*, there was expert testimony establishing that the weapon tied to the defendant was the same caliber as that causing the victim's injury. *See id.* Here, there is only speculation. The testifying expert declined to state that E.L.'s injury was caused by a knife.

These facts are similar to those in *Lubenow*, in which the supreme court held it was error to admit weapons that could not be connected to the crime. In *Lubenow*, there was no blood or other bodily tissue on the arrows that were admitted, as there was none here on appellant's knife. *State v. Lubenow*, 310 N.W.2d 52, 56 (Minn. 1981). "Furthermore, it was not shown that the crime was committed by use of arrows. A doctor testified that "he thought" the victim's injuries could have been made by arrows. However, it was conceded at trial that any number of other instruments could also have made the injuries." *Id*. Similarly here, the jury could have speculated that E.L.'s injuries were caused by a knife of the type possessed by appellant. But there was no expert testimony establishing that E.L.'s injuries were caused by *any kind of* knife. Without such testimony, the probative value of the knife is too slight to justify its admission. As the *Lubenow* court stated with respect to arrows, "[t]he admission of the arrows at trial impermissibly suggested to the jury that the crime was committed with arrows which were in the defendant's possession." *Id.*

The erroneous admission of this evidence was not "harmless." Although there was evidence of an altercation, the only evidence to support second-degree assault, assault with a dangerous weapon, was E.L.'s vague testimony that appellant stabbed him, and the speculative inference that the knife in appellant's duffel bag might have done the

stabbing. That inference from the erroneously admitted knife is far too critical to the state's proof to say that the admission of the knife was harmless error.

I dissent and would reverse and remand for a new trial.