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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-944**

State of Minnesota,
Respondent,

vs.

Por Moua,
Appellant.

**Filed July 2, 2012
Affirmed
Wright, Judge**

Ramsey County District Court
File No. 62-CR-10-6025

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Kaarin Long, Assistant Ramsey County Attorney, St. Paul, Minnesota (for respondent)

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Considered and decided by Wright, Presiding Judge; Ross, Judge; and Willis,
Judge.*

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

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges his conviction of first-degree assault, arguing that (1) the district court erroneously denied his motion to suppress his custodial statement to the police because the waiver of his Fifth Amendment rights against self-incrimination was not knowing, intelligent, or voluntary; (2) the evidence is insufficient to support the guilty verdict; and (3) the district court abused its discretion by ruling that three of appellant's prior convictions could be used for impeachment. We affirm.

FACTS

On July 23, 2010, appellant Por Moua bit his former girlfriend, L.Y., on the face. After inflicting this injury, Moua fled the scene with L.Y.'s cellular telephone. St. Paul Police Officer Lance Christianson responded to L.Y.'s call for assistance, and L.Y. was transported to the hospital. The physician who treated L.Y. determined that the bite caused a "very ragged-edged wound . . . [with] a skin flap that was only partially left attached." The physician closed the deep wound with sutures.

Moua subsequently was arrested and charged with first-degree assault, a violation of Minn. Stat. § 609.221, subd. 1 (2010).¹ St. Paul Police Sergeant Paul Meffert conducted a custodial interview. After gathering biographical information from Moua, Sgt. Meffert advised Moua of his constitutional rights, pursuant to *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 1630 (1966), using a form placed on the table so that

¹ The state later amended its complaint, adding charges of third-degree assault, a violation of Minn. Stat. § 609.223, subd. 1 (2010), and felony domestic assault, a violation of Minn. Stat. § 609.2242, subd. 4 (2010).

Moua could read along. After each statement regarding his constitutional rights, Moua responded to Sgt. Meffert in the affirmative. The following exchange then occurred:

Q [Sgt. Meffert]: And then this just says the above rights have been read to me. I have initialed each paragraph to show that I understand each of my rights. I have received a copy of this form. You understand those, I need your signature by this one, your initials by the little ones that you said yes to and then I will sign it and give you a copy of it (clears throat).

A [Por Moua]: I will have to wait before I sign it.

Q: You'll have to wait?

A: Mm-hmm (affirmative).

Q: It's just acknowledging whether you understand your rights or not.

A: Yeah. I confused [sic] about my rights.

Q: You're confused about your rights?

A: Yes.

Q: I guess we'll end this interview then.

(Tape stops)

(Tape begins again)²

A: I will be cooperate [sic] with you.

Q: Okay.

A: I want to be, um, but you have to be honest with me.

Q: Okay. Let's sign the form and we can talk. You can't talk to me until you acknowledge that you have your rights. Can you initial each one of those for me? Okay.

After Moua initialed and signed the form, he gave a lengthy statement. In the statement, Moua admitted that he "slid [his] teeth to her face" and cut L.Y. But he maintained that the injury was accidentally inflicted during his attempt to kiss her.

Moua moved to suppress his statement, arguing that Sgt. Meffert violated Minnesota law by failing to provide an interpreter to Moua and that Moua did not validly

² The tape recorder was turned off. Sgt. Meffert stood up and walked toward the door to leave. Moua told Sgt. Meffert that he wanted to be truthful. After this statement, Sgt. Meffert again turned on the tape recorder, which had been off for five to ten seconds.

waive his *Miranda* rights. The district court denied the motion. The matter proceeded to a jury trial, during which the state played the audio recording of Moua's custodial interview for the jury. Following the admission of Moua's statement in evidence, Moua exercised his right to testify. The state had given notice of its intent to impeach Moua with his prior convictions if he testified. Over Moua's objection, the district court admitted evidence pertaining to three of Moua's prior convictions. The jury found Moua guilty of the charged offenses, and the district court sentenced Moua to 175 months' imprisonment for his conviction of first-degree assault. This appeal followed.

DECISION

I.

Moua argues that his conviction should be reversed because the district court failed to suppress his statement to Sgt. Meffert. The United States Constitution and the Minnesota Constitution protect a person from self-incrimination. U.S. Const. amend. V; Minn. Const. art. I, § 7. Prior to conducting a custodial interrogation, an officer must advise a suspect of the constitutional rights against self-incrimination and the right to counsel. *State v. Farrah*, 735 N.W.2d 336, 340 (Minn. 2007) (citing *Miranda*, 384 U.S. at 479, 86 S. Ct. at 1630). If a defendant asserts the right to counsel, interrogation must cease unless the defendant initiates further communication with the police and validly waives the earlier request for counsel. *State v. Hannon*, 636 N.W.2d 796, 804 (Minn. 2001). The state may not introduce a defendant's custodial statement absent a voluntary, knowing, and intelligent waiver of the defendant's constitutional rights. *State v. Marin*, 541 N.W.2d 370, 374 (Minn. App. 1996), *review denied* (Minn. Feb. 27, 1996). The

burden to prove a valid waiver rests with the state and must be established by a preponderance of the evidence. *Farrah*, 735 N.W.2d at 341 (citing *Colorado v. Connelly*, 479 U.S. 157, 168, 107 S. Ct. 515, 522 (1986)). “Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.” *Id.* (quotation omitted).

The district court found that Moua’s waiver of his *Miranda* rights was voluntary, knowing, and intelligent. Moua challenges the district court’s decision, arguing that the waiver was invalid because he did not have an interpreter and he indicated that he was confused about his rights. When reviewing whether a claimed *Miranda* waiver is valid, we review the district court’s findings of fact for clear error and its legal conclusions based on those facts de novo. *Farrah*, 735 N.W.2d at 341.

A.

Moua first challenges the district court’s factual finding that he is not a person disabled in communication. A person is disabled in communication if he or she cannot fully understand legal proceedings because of a difficulty speaking or comprehending English. Minn. Stat. § 611.31 (2010). Under Minnesota law, a police officer must provide an interpreter before interrogating or taking a statement from a person “disabled in communication.” Minn. Stat. § 611.32, subd. 2 (2010).

The record provides ample support for the district court’s finding that Moua is not a person disabled in communication. During Sgt. Meffert’s interview, Moua proceeded in English without indicating any difficulty understanding the English language. And he

provided substantively appropriate responses to Sgt. Meffert’s questions. In court, Moua communicated effectively in English on multiple occasions. In addition, when provided with an interpreter during a suppression hearing held pursuant to Minn. R. Crim. P. 12.03, Moua clearly asserted to the district court that he did not want to use the language-interpretation headset because, he stated, he wanted “to listen to hear what [the district court was] saying at the same time.” The record also establishes that Moua has lived in the United States for nearly 30 years, since he was six years old. From elementary school through his graduation from high school, Moua received his formal education in the United States. At the time of this offense, Moua was working two jobs—one at an Internet café and the other “in pensions” for a staffing company. The record contains no suggestion that Moua communicated in a language other than English at either job.

On this record, the district court’s factual finding that Moua is not a person disabled in communication is supported by substantial evidence. Moua, therefore, is not entitled to relief on this ground.³

B.

Moua also argues that his statement of confusion, before waiving his constitutional rights, establishes that he did not provide a knowing and intelligent waiver. We review *de novo* whether the state established by a preponderance of the evidence that Moua

³ Because we conclude that there is substantial evidence to support the district court’s finding that Moua is not a person disabled in communication, there is no factual basis to establish a violation of Minnesota’s interpreter statute to support Moua’s argument, addressed in Part I.A., *infra*, that his waiver was not knowing and intelligent. *See* Minn. Stat. § 611.32, subd. 2 (providing that police officer must provide an interpreter before interrogating or taking a statement from a “person disabled in communication”).

validly waived his constitutional rights. *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995).

Generally, “[i]f the police fully advise an accused of his *Miranda* rights, and the accused indicates that he understands his rights and nevertheless gives an incriminating statement, the state is deemed to have met its burden of proving that the accused knowingly and intelligently waived his rights.” *Id.* If there is other evidence that the waiver was not knowing and intelligent, however, we examine the totality of the circumstances to determine whether the waiver was valid. *State v. Camacho*, 561 N.W.2d 160, 169 (Minn. 1997). Factors for consideration include the defendant’s age, maturity, intelligence, education, experience, and ability to comprehend; the lack or the adequacy of the *Miranda* warnings; the length and legality of the detention; the nature of the interrogation; the use of physical deprivation; and the defendant’s access to counsel and friends. *State v. Earl*, 702 N.W.2d 711, 718-19 (Minn. 2005).

Apart from his claimed language impairment that we address in Part I.A., Moua argues that he did not knowingly and intelligently waive his rights because, after he informed Sgt. Meffert that he was “confused about [his] rights,” Sgt. Meffert interviewed him absent any explanation of his constitutional rights. We begin our examination of the totality of the circumstances by observing that, having been convicted of six criminal offenses before his arrest in this case, Moua was familiar with the criminal-justice system when he was questioned by Sgt. Meffert. Indeed, on at least one occasion prior to the instant offense, Moua effectively exercised his constitutional rights and requested to speak with his lawyer before custodial police questioning.

We also are mindful that the audio recording admitted in evidence establishes that Sgt. Meffert conducted the interview in an audibly nonthreatening manner and tone of voice. The evidence also demonstrates that, when Sgt. Meffert requested Moua's signature on the waiver, Moua replied that he would have to wait. When Sgt. Meffert attempted to clarify Moua's response, Moua indicated that he was "confused about [his] rights." Although these statements by Moua occurred after he had told Sgt. Meffert that he understood his rights, Sgt. Meffert responded to these changed circumstances by immediately ending the interview. Moua, not Sgt. Meffert, reinitiated conversation. Stating his desire to be truthful and cooperate, Moua then signed and initialed the waiver before any additional questioning by Sgt. Meffert occurred. Although at oral argument counsel for Moua asserted that the better course would have been for Sgt. Meffert to attempt to alleviate Moua's confusion by explaining the law, the state argued persuasively that a police officer's elaboration beyond the *Miranda* advisory could have led to a misstatement of the law or claims of coercion.

Based on our careful review of the record and the totality of the circumstances, including Moua's prior experience with criminal investigations and prosecutions, his education and work experience, and his length of time in the United States, we conclude that the state satisfied its burden of proving by a preponderance of the evidence that Moua knowingly, intelligently, and voluntarily waived his *Miranda* rights. Accordingly, the district court properly admitted Moua's statement in evidence.

II.

Moua next argues that the evidence is insufficient to sustain his conviction of first-degree assault because the state failed to prove beyond a reasonable doubt that he inflicted great bodily harm on L.Y. When reviewing a challenge to the sufficiency of the evidence, we conduct a thorough analysis of the record to determine whether the jury reasonably could find the defendant guilty of the charged offense based on the facts in the record and the legitimate inferences that can be drawn from those facts. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). In doing so, we view the evidence in the light most favorable to the verdict and assume that the jury believed the evidence supporting the guilty verdict and disbelieved any evidence to the contrary. *Id.* We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, reasonably could conclude that the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

A person who “assaults another and inflicts great bodily harm” commits first-degree assault. Minn. Stat. § 609.221, subd. 1. An injury that causes “serious permanent disfigurement” constitutes great bodily harm. Minn. Stat. § 609.02, subd. 8 (2010). Any type of scarring may constitute disfigurement, and its seriousness may depend on a scar’s size and location. *State v. Gerald*, 486 N.W.2d 799, 802 (Minn. App. 1992). Whether a particular injury constitutes great bodily harm is a question of fact for the jury’s determination. *State v. Moore*, 699 N.W.2d 733, 737 (Minn. 2005).

Photographs of L.Y.'s bite-shaped wound were admitted in evidence. L.Y.'s plastic and reconstructive surgeon testified that L.Y.'s wound required "a deep layer of sutures" in a prominent location. Because of the wound's nature and shape, the surgeon testified, the scar is thick and "much more noticeable than a linear scar." Moreover, the jury observed the appearance of L.Y.'s scar when she appeared in court and testified. When viewed in the light most favorable to the verdict, there is ample evidence to prove beyond a reasonable doubt that Moua is guilty of first-degree assault. *See State v. McDaniel*, 534 N.W.2d 290, 293 (Minn. App. 1995) (concluding that victim's scars, viewed by jury through photographs and visible to jury while victim testified, sustained defendant's conviction of first-degree assault causing serious permanent disfigurement), *review denied* (Minn. Sept. 20, 1995).

III.

Moua also challenges the district court's decision to permit the state to impeach his testimony with evidence of three prior convictions. We review a district court's ruling on the admissibility of this impeachment evidence for a clear abuse of discretion. *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006).

Evidence of a witness's prior convictions is admissible for "the purpose of attacking credibility" if the crime is a felony under the law of the jurisdiction in which the witness was convicted and the district court determines that the "probative value of admitting this evidence outweighs its prejudicial effect." Minn. R. Evid. 609(a)(1). When the witness is the defendant, the district court considers the following factors to determine whether the probative value of the evidence outweighs its prejudicial effect:

(1) the impeachment value of the prior crime, (2) the date of the conviction and the defendant's subsequent history, (3) the similarity of the past crime to the charged crime such that more similarity poses a greater reason for excluding the prior crime for impeachment, (4) the importance of the defendant's testimony, and (5) the centrality of credibility as an issue. *State v. Jones*, 271 N.W.2d 534, 537-38 (Minn. 1978).

The state gave notice of its intent to impeach Moua with six prior convictions. Over Moua's objection, the district court ruled that the state could impeach Moua with evidence of three of Moua's prior convictions. We examine in turn each conviction admitted.

A.

Regarding his prior conviction of unlawful sexual intercourse, Moua challenges the district court's findings that the conviction's "impeachment value is great" and that the offense is not similar in nature to the charged offenses. Moua argues that, because the conviction is not directly probative of his truthfulness, its impeachment value is minimal. Evidence of a prior conviction is meant to help the jury see the witness as a whole person so as to better judge the credibility of the witness's testimony. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993). Under the "whole person" doctrine, crimes need not involve dishonesty in order to have impeachment value. *See, e.g., State v. Pendleton*, 725 N.W.2d 717, 723, 728 (Minn. 2007) (holding that defendant's prior convictions of fleeing a peace officer and making terroristic threats were admissible in a trial for first-degree premeditated murder and felony murder because they were important to jury's judgment of defendant-witness's credibility and helped jury see "whole person"); *Swanson*, 707

N.W.2d at 655 (holding that defendant’s prior convictions of motor-vehicle theft, assault, criminal vehicular operation, and possession of stolen property were admissible in trial for first- and second-degree murder, felony murder, kidnapping, and false imprisonment because they were relevant under “whole person” analysis to better evaluate defendant’s truthfulness). Rather, “any felony conviction is probative of a witness’s credibility, and the mere fact that a witness is a convicted felon holds impeachment value.” *State v. Hill*, 801 N.W.2d 646, 652 (Minn. 2011).

Moua also argues that, because the prior unlawful-sexual-intercourse conviction and the charged offense are both “crimes against women with whom Moua had an intimate relationship,” they are similar in nature. But based on the description of the prior conviction to which Moua stipulated, the jury was told that “the defendant . . . was sentenced on July 24th of 2003 to the felony of unlawful sexual intercourse, California.” Moua’s relationship to the victim was not disclosed. As presented to the jury, this offense is facially dissimilar from the charged offense—first-degree assault. The district court did not abuse its broad discretion when it weighed the *Jones* factors and admitted the fact of this prior conviction in evidence.

B.

Moua next challenges the district court’s admission of his prior conviction of failure to register as a predatory offender because the district court did not make express findings on each of the *Jones* factors. Such an omission is harmless error if the evidence of the prior conviction could have been admitted after a proper application of the *Jones*

factors. *See State v. Vanhouse*, 634 N.W.2d 715, 719 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001).

The district court found that the first two *Jones* factors weighed in favor of admission. The district court then concluded that its analysis of the unlawful-sexual-intercourse conviction also pertains to this offense with regard to the importance of Moua’s testimony and the centrality of credibility as an issue.

Although the district court did not make an express finding addressing the similarity between the prior conviction of failure to register as a predatory offender and the charged offense, Moua does not dispute what is self-evident—failure to register as a predatory offender is markedly dissimilar from first-degree assault. Because Moua’s conviction for failure to register as a predatory offender would have been admissible after a complete application of the *Jones* factors, any deficiency in the district court’s on-the-record analysis is harmless error.

C.

Regarding his prior conviction of terroristic threats, Moua argues that the district court erroneously calculated the age of the conviction and, as a result, erred in its determination of the probative value of the conviction. Because Moua did not object on this ground in district court, we conduct a plain-error analysis. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). In doing so, we analyze whether there is an error, whether such error is plain, and whether it affects the defendant’s substantial rights. *Id.* An error is plain if it is “clear” or “obvious,” *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted), or if it “contravenes case law, a rule, or a standard of

conduct,” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An error affects substantial rights “if the error was prejudicial and affected the outcome of the case.” *Griller*, 583 N.W.2d at 741. If the three plain-error factors are established, we then consider whether to remedy the error to ensure the fairness and integrity of the judicial proceedings. *Id.* at 740.

The state concedes that the district court plainly erred when calculating the age of this conviction. But the state contests Moua’s assertion that this error affects his substantial rights. Here, the evidence refuting Moua’s defense theory that he did not assault L.Y. was strong. Several witnesses corroborated L.Y.’s testimony. In addition, Moua contradicted himself—initially testifying that he was not with L.Y. on the night of the assault and later conceding that he was with her. Moreover, had evidence of Moua’s prior conviction of terroristic threats been properly excluded, the jury still would have heard evidence of two properly admitted prior convictions that impeached Moua’s testimony. On this record, we conclude that the district court’s error did not affect Moua’s substantial rights.⁴

Accordingly, the district court’s admission of the impeachment evidence does not, as Moua argues, warrant reversal of his conviction.

⁴ Because Moua fails to establish the third element of the plain-error test, we need not reach the question of whether granting the remedy which he seeks is necessary to ensure fairness and the integrity of the judicial proceedings. *See Griller*, 583 N.W.2d at 740 (stating that remedy to ensure fairness and integrity of judicial proceedings considered only after three plain-error factors are established).

IV.

Finally, Moua raises several issues in his pro se supplemental brief. But such claims on appeal are forfeited if they are unsupported by argument or legal authority and prejudicial error is not “obvious on mere inspection.” *State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) (quotation omitted). Because Moua fails to brief the issues adequately or provide any legal authority in support of his arguments, and prejudicial error is not obvious on mere inspection, we conclude that Moua has forfeited his pro se claims.

Affirmed.⁵

⁵ We observe that the district court adjudicated Moua’s convictions of both first-degree assault and third-degree assault. Under Minnesota law, a defendant may not be convicted of both the crime charged and an included offense. Minn. Stat. § 609.04, subd. 1(2010). An included offense includes a “lesser degree of the same crime.” *Id.*, subd. 1(1). Because third-degree assault is a lesser-included offense of first-degree assault, Moua’s conviction of third-degree assault is not authorized by law. Although this issue is not raised on appeal, the district court may, at any time, correct a sentence that is not authorized by law. Minn. R. Crim. P. 27.03, subd. 9.