STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1014

State of Minnesota,
Respondent,

vs.

Jeremy John Dahlquist,
Appellant.

Filed June 6, 2011
Affirmed
Bjorkman, Judge

Chisago County District Court
File No. 13-CR-09-1173

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

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, Center City, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Appellant challenges his conviction of fourth-degree criminal sexual conduct, arguing that the district court plainly erred in admitting evidence of prior interactions

between appellant and the victim. Because we discern no plain error affecting appellant's substantial rights, we affirm.

FACTS

On July 18, 2009, appellant Jeremy Dahlquist was at a bar in Taylors Falls. L.K. and her husband were also at the bar, and at some point, L.K. went to the restroom. As she left the restroom, a man grabbed her from behind and told her that he "really needed to f--k [her]." The man kissed her neck then pushed her toward the stairway that leads to the back parking lot. L.K. tried to get away from the man, but he put his hand down the back of her pants and touched her anus. L.K. was able to extricate herself, returned to her table and told her husband that someone had tried to rape her, and pointed out Dahlquist. L.K.'s husband reported the incident, and Dahlquist was arrested.

Dahlquist was charged with fourth-degree criminal sexual conduct.[1] At trial, L.K. testified that she recognized Dahlquist because she had noticed him staring at her on two prior occasions, once a few days before the incident at the bar and once approximately four years earlier. Dahlquist did not object to this testimony. The jury found Dahlquist guilty. This appeal follows.

D E C I S I O N

Dahlquist concedes that he did not object to the admission of L.K.'s testimony regarding her prior encounters with him. We review unobjected-to evidentiary issues for plain error. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn.

[1] Dahlquist also was charged with and convicted of obstructing legal process, but he does not challenge that conviction in this appeal.

1998). On plain-error review, the defendant must show that (1) there was error, (2) the error was plain, and (3) the error affected his substantial rights. *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). An error is plain if it "contravenes case law, a rule, or a standard of conduct," *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006), and it affects substantial rights if there is a reasonable likelihood that its absence would have had a significant effect on the jury's verdict, *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007). If the three plain-error factors are established, we then consider whether the error seriously affected the fairness and integrity of the judicial proceedings. *See Griller*, 583 N.W.2d at 740, 742 (explaining that a court may exercise its discretion to correct a plain error only if such error seriously affected the fairness, integrity, or public reputation of judicial proceedings).

Toward the end of her direct-examination, L.K. identified Dahlquist as her assailant. The prosecutor asked her whether she had seen Dahlquist before. L.K. responded that she had, then explained: "It was the Wednesday night prior I was sitting at a picnic table outside, and he had came and sat at my picnic table, and just sat there and stared at me. And until I felt uncomfortable and left and went back inside." Approximately four years earlier, L.K. was at a restaurant with a friend and noticed Dahlquist "watching me as I walked out, staring at me." She testified that the incident made her uncomfortable so she had someone walk her to her car. Dahlquist argues that this testimony was plainly inadmissible because it was irrelevant, unfairly prejudicial, and amounted to improper character or *Spreigl* evidence. We address each argument in turn.

"'Relevant evidence' means 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." *See* Minn. R. Evid. 401. Dahlquist asserts that L.K.'s testimony that she had seen him on prior occasions is irrelevant because the only disputed fact issue is whether the assault occurred. We disagree. Evidence that Dahlquist had previously exhibited interest in L.K. that made her uncomfortable places the assault in context and sheds light on Dahlquist's motivation. *See State v. Patterson*, 796 N.W.2d 516, 530 (Minn. App. 2011) (holding that evidence of defendant's gang membership was relevant to show context and motive), *pet. for review filed* (Minn. Apr. 14, 2011); *see also State v. Ness*, 707 N.W.2d 676, 687 (Minn. 2006) (stating that "motive explains the reason for an act" and "concerns external facts that create a desire in someone to do something" (quotation omitted)). And the nature of the prior encounters is probative because it makes Dahlquist's commission of the assault more probable. On this record, we conclude that L.K.'s testimony regarding her previous interactions with Dahlquist was relevant.

Nor are we persuaded that the testimony's potential for unfair prejudice substantially outweighs its probative value. Minn. R. Evid. 403. Dahlquist asserts that the evidence was unfairly prejudicial because it "portrayed him as a sexual predator or pervert who had stalked [L.K.] and leered at her for years." We disagree. While the jury could have viewed L.K.'s testimony in the negative manner Dahlquist suggests, the jury could have disregarded the evidence entirely or weighed it against L.K. on the ground that she overreacted to the prior incidents. Accordingly, we conclude that the evidence is

not so clearly susceptible to unfair use against Dahlquist that its admission constitutes plain error.

Dahlquist's argument that the testimony amounted to improper character or *Spreigl* evidence also is unavailing. The state is precluded from using evidence of a defendant's other crimes or bad acts as character evidence and may use the evidence for other limited purposes only if it complies with procedural prerequisites, including notice to the defendant. Minn. R. Evid. 404(b); *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965)). These rules do not apply here because L.K.'s testimony was not *Spreigl* or character evidence. *State v. McLeod*, 705 N.W.2d 776, 787-88 (Minn. 2005) (stating that a *Spreigl* act need not be a crime, but it must be a bad act). Merely looking at or even "staring" at a person in a public place is not a crime, and doing so twice in four years is not inherently wrong. *See Ture v. State*, 681 N.W.2d 9, 16-17 (Minn. 2004) (holding that evidence that defendant collected information about women was not *Spreigl* evidence because there is nothing inherently wrong with collecting information about women). And the testimony does not amount to character evidence, because it does not indicate a particular character trait. Accordingly, we conclude that the district court did not plainly err in admitting the testimony.

Moreover, any error in admitting L.K.'s testimony did not impair Dahlquist's substantial rights. The testimony played a minimal role in the trial; it was brief and the prosecutor did not mention the testimony during closing argument. *See State v. Soukup*, 376 N.W.2d 498, 503 (Minn. App. 1985) (stating that improper testimony that plays only

a small part in the trial may be considered harmless error), *review denied* (Minn. Dec. 30, 1985). Rather, defense counsel used this testimony to attack L.K.'s credibility, arguing that her testimony differed from what she told police. *See State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010) (stating that defendant's opportunity and efforts to rebut improper suggestions may be considered in determining the effect of an error). And the evidence against Dahlquist was strong; L.K. gave consistent testimony about the offense, which was corroborated by witnesses who observed her contemporaneous emotional state. *See id.* (permitting consideration of the strength of the evidence in determining harmless error); *State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004) (stating that testimony about a victim's emotional condition after a sexual assault is corroborative evidence), *review denied* (Minn. Aug. 17, 2004). In sum, the record does not indicate that L.K.'s testimony regarding her prior interactions with Dahlquist impaired Dahlquist's substantial rights. Accordingly, we conclude that Dahlquist is not entitled to relief on this basis.

Affirmed.