

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-263

MAY TERM, 2005

State of Vermont	}	APPEALED FROM:	}
v.	}	District Court of Vermont,	}
	}	Unit No. 2, Bennington Circuit	}
Aaron Ritter	}		}
	}	DOCKET NO. 48-1-03 Bncr	}

Trial Judge: David Suntag

In the above-entitled cause, the Clerk will enter:

Defendant Aaron Ritter appeals from his conviction of aggravated domestic assault after a jury trial. He asserts that the court erred by admitting evidence of his prior abuse of the victim. We affirm.

In January 2003, defendant was charged with first degree aggravated domestic assault after allegedly assaulting his girlfriend, Tina Baker. According to the affidavit of probable cause, defendant threw Baker down on the bed and attempted to hold her down as they wrestled. When Baker tried to leave, defendant grabbed her, put her in a headlock, picked her feet up off the ground, and stated that he was going to “snap her neck.” Defendant’s father intervened, and Baker left the parties’ residence. Baker provided police with a sworn statement to this effect.

In May 2003, Baker wrote a letter to the court, stating that defendant had not physically abused her and asking that the charge against defendant be dropped. At her deposition, Baker testified that on the day in question, she had “lost it” and gone after defendant. She suggested that defendant had attacked her in self-defense. She stated that she did not remember being placed in a headlock, and testified that she might have received the bruises on her arms at work. She denied that defendant had hurt her or that she had experienced any pain during the incident.

At trial, the State presented three witnesses—the victim, her mother, and the police officer who had investigated Baker’s complaint. Baker’s mother testified that on the morning of January 11, Baker called her crying and hysterical; Baker stated that defendant had beat her up. When Baker arrived at her mother’s home, she told her mother that defendant had grabbed her arm, and put her in a headlock and said he was going to snap her neck. Baker’s mother testified that she observed a red “grab mark” on Baker’s arm and redness around the front of her neck. The officer who had taken Baker’s statement testified that he had observed injuries on Baker’s right arm and redness in her neck area. Photographs of Baker, taken after the incident, were admitted into evidence.

At trial, Baker testified that on the evening in question, she had gotten angry at defendant, threw an engagement ring at him, and spit at him. She stated that she then slapped defendant and he grabbed her arm. After exchanging words, they wrestled. When she tried to leave, defendant grabbed her. She later testified that defendant placed her in a headlock and threatened to snap her neck. She stated that she didn’t recall if she felt pain or not, nor did she recall that she had any redness around her neck. Baker acknowledged that she called her mother after the incident and told her what had happened. Baker testified that a few days after the incident, she had returned to defendant and he had assaulted her again. Baker acknowledged that she and defendant had a violent relationship; and she testified to several past incidents of abuse, including defendant knocking out her tooth, tying her up, kicking her in the ribs, and throwing her down the stairs. Defense counsel did not object to this testimony. Defendant’s father testified on defendant’s behalf, suggesting that Baker had attacked defendant and defendant had acted in self-defense. He stated that he had not seen defendant put Baker in a headlock, nor had he heard defendant say that he was going to snap Baker’s neck. The

jury found defendant guilty of first degree aggravated domestic assault, and this appeal followed.

Defendant argues that the court erred by allowing evidence of his fifteen-year history of abusing Baker. Defendant maintains that the only purpose of this evidence was to show his character and his propensity to commit the charged crime. He argues that the trial court violated V.R.E. 403 and V.R.E. 404(b), and denied him his right to a fair trial.

Defendant did not object to the introduction of this evidence at trial, and our review is for plain error only. “Plain error exists only in exceptional circumstances where a failure to recognize error would result in a miscarriage of justice, or where there is glaring error so grave and serious that it strikes at the very heart of the defendant’s constitutional rights.” State v. Pelican, 160 Vt. 536, 538-39 (1993) (internal quotation marks and citation omitted). Defendant has not demonstrated plain error here.

Evidence of defendant’s prior abuse of Baker was admissible and relevant to portray the history surrounding the parties’ abusive relationship and to provide a needed context for the behavior at issue. See State v. Sanders, 168 Vt. 60, 62 (1998). We explained in Sanders that “[t]he purpose of establishing defendant’s history of abusing the victim is not to show his general character for such abuse, but to provide the jury with an understanding of defendant’s actions on the date in question.” Id. The evidence was also relevant “to put the victim’s recantation of prior statements into context for the jury,” and to provide the jury with an understanding of “why the victim is less than candid in her testimony.” Id. at 63. As we stated in Sanders, such evidence allows the jury “to decide more accurately which of the victim’s statements more reliably reflect reality.” Id.

In this case, the jury was faced with a single act of domestic violence. Defendant argued that Baker should not be believed because she had given inconsistent statements, and he suggested that he had acted in self-defense. Baker herself minimized the incident, testifying that she did not feel any pain. The evidence was properly admitted under our reasoning in Sanders. As we explained in that case,

“[a]llegations of a single act of domestic violence, taken out of its situational context, are likely to seem incongruous and incredible to a jury. Without knowing the history of the relationship between the defendant and the victim, jurors may not believe the victim was actually abused, since domestic violence is learned, controlling behavior aimed at gaining another’s compliance through multiple incidents.”

173 Vt. at 62 (internal quotation marks and citations omitted).

We addressed a similar situation in State v. Hendricks, 173 Vt. 132, 139 (2001). In that case, the jury was presented with a single act of domestic violence. The defendant asserted that he had acted in self-defense, and that the injuries to the victim had occurred either in defending himself or as the result of the victim’s previous accidental fall. We found no abuse of discretion in the court’s admission of evidence of the defendant’s prior abuse of the victim, explaining that the evidence was introduced not to show defendant’s propensity to commit abuse but rather “to provide the jury with an understanding of defendant’s actions on the date in question.” Id. (quoting Sanders, 173 Vt. at 62). We reach a similar conclusion here.

We reject defendant’s assertion that the State engaged in “prosecutorial overkill” in describing the past incidents of abuse. As discussed above, the evidence was relevant and admissible, and the record shows that Baker’s testimony on this subject was limited, and used by the State for a proper purpose. Compare State v. Lawton, 164 Vt. 179, 181 (1995) (holding that improper admission of numerous bad acts allegedly committed by defendant, punctuated with improper prosecutorial comments about defendant’s character, were potentially so damaging that reversal was required). Defense counsel acknowledged in his closing statement that the law allowed the prior incidents of abuse to come before the jury to provide a context for the parties’ relationship, and the court specifically instructed the jury that the evidence could be used only for this purpose. Defendant has not demonstrated plain error. Cf. Hendricks, 173 Vt. at 140-41 (finding no plain error in trial court’s charge to jury regarding prior bad acts evidence in domestic assault case where court admitted evidence to show context of parties’ relationship and issued limiting instructions requiring jury to consider it for that purpose alone).

Affirmed.

BY THE COURT:

---

Paul L. Reiber, Chief Justice

---

John A. Dooley, Associate Justice

---

Denise R. Johnson, Associate Justice