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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1888**

State of Minnesota,
Respondent,

vs.

Michael Lavale Powell,
Appellant.

**Filed September 18, 2017
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-16-10065

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Halbrooks, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his conviction of felony domestic assault, appellant argues that the state failed to prove beyond a reasonable doubt that the complainant was his family or

household member and that the district court abused its discretion in admitting certain relationship evidence. We affirm.

FACTS

On the night of April 11, 2016, E.G. and appellant Michael Lavale Powell, whom E.G. called her boyfriend, were spending time together at E.G.'s apartment. E.G. confronted Powell about some hickeys on his neck and told him, "I'm done." Powell "seemed upset" by this, and, when E.G. walked into the bathroom, Powell "cornered" her there and began to choke her, saying, "B-tch, I'll kill you." Powell let E.G. go but followed her into the bedroom and choked her again in front of her six-year-old grandchild. Powell then took E.G.'s phone from her and refused to return it for several hours. Powell also threw small household items at E.G., pushed and dragged her around the apartment, and kicked her. Powell left the apartment for a while and took E.G.'s car without her permission, but he later returned.

The next morning, E.G. called 911 and reported the assault. E.G. told the responding police officer that Powell choked her, and the officer photographed some scratch marks that he saw on E.G.'s neck. A police detective interviewed E.G. by telephone later that day, and E.G. told him that Powell choked her. Respondent State of Minnesota charged Powell with domestic assault (fear/harm), which was charged as a felony based on

an allegation that Powell had two previous qualified domestic violence-related offense convictions.¹

At Powell's jury trial, the state presented E.G.'s inculpatory testimony; corroborating police testimony; a photograph of E.G.'s injuries; and testimony by Powell's former girlfriend, J.K., about her domestic abuse by Powell, which was introduced as relationship evidence over Powell's objection. Before this relationship evidence was presented, the district court gave a cautionary instruction. The cautionary instruction was repeated at the close of trial. The jury found Powell guilty.² This appeal followed sentencing.

DECISION

I.

To convict a defendant of domestic assault, the state must prove beyond a reasonable doubt that the victim was the defendant's family or household member at the time of the assault. *See* Minn. Stat. § 609.2242, subd. 1 (providing that domestic assault is assault committed "against a family or household member as defined in [Minnesota Statutes] section 518B.01, subdivision 2"); *State v. Struzyk*, 869 N.W.2d 280, 289 (Minn. 2015) ("It is axiomatic that it is the State's burden to prove every element of the charged

¹ Domestic assault is a felony if it is committed "within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions." Minn. Stat. § 609.2242, subds. 1, 4 (2014).

² Because Powell stipulated that he had two previous qualified domestic violence-related offense convictions, the jury was not asked to consider that element of felony domestic assault.

offense.”). The definition of “family or household members” includes “persons involved in a significant romantic or sexual relationship.” Minn. Stat. § 518B.01, subd. 2(b)(7) (2014).

In determining whether persons are or have been involved in a significant romantic or sexual relationship . . . , the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

Id., subd. 2(b) (2014).

Powell argues that the evidence is insufficient to prove beyond a reasonable doubt that he and E.G. were involved in a significant romantic or sexual relationship because the evidence (1) shows that Powell and E.G.’s relationship was brief, (2) does not show that Powell and E.G. had “declared their love for one another or that they had developed feelings deep enough to qualify as love or romance,” (3) does not show “how often [E.G.] and Powell saw each other . . . or how often they had sexual intercourse,” and (4) does not show that “the[] relationship was an exclusive one, that [Powell and E.G.] often spent the night at each other’s homes, that they kept personal belongings at each other’s homes, or that they had introduced each other to their family and or friends.”

Our review of the sufficiency of the evidence is limited “to ascertaining whether the jury, giving due regard to the presumption of innocence and to the state’s burden of proving guilt beyond a reasonable doubt, could reasonably have found the appellant guilty.” *State v. Webster*, 894 N.W.2d 782, 785 (Minn. 2017) (quotation omitted). We “adopt the view of the evidence most favorable to the state” and assume that “the jury believed the state’s

witnesses and disbelieved any contradictory evidence.” *Id.* (quotations omitted); *see also State v. Vasko*, 889 N.W.2d 551, 558 (Minn. 2017) (“We must view the evidence in the light most favorable to the verdict.”).

E.G. testified that Powell was her “boyfriend” for “[f]ive months” and that the relationship was both romantic and sexual in nature. According to E.G., she ended the relationship on the night of the assault by telling Powell that she was “done,” after she saw hickeys on his neck, and Powell “seemed upset” by this. E.G.’s testimony also showed that Powell had at least one change of clothing at E.G.’s apartment on the night of the assault and that, on at least two different nights, she and Powell spent time together in her apartment while her young grandchild was there.

The responding police officer testified that E.G. told him that she and Powell were “boyfriend/girlfriend” and that Powell “occasionally lived at [E.G.]’s apartment.” The police detective who interviewed E.G. also testified that E.G. referred to Powell as “her boyfriend.” The jury heard a recording of that interview, during which E.G. explained that Powell assaulted her because she asked him about “hickeys” or “love marks” that she saw on his neck. The detective also testified that, during his interview of Powell, Powell told him that E.G. “used to be his girlfriend.”

Viewed in the light most favorable to the verdict, *Vasko*, 889 N.W.2d at 558, the evidence presented at trial provided a reasonable basis for the jury’s determination that Powell and E.G. were involved in a significant romantic or sexual relationship at the time of the assault. We, therefore, conclude that sufficient evidence supports Powell’s conviction of felony domestic assault.

II.

“Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b). Such evidence, commonly known as *Spreigl* evidence, may be admitted “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident,” but only if, among other things, “the prosecutor clearly indicates what the evidence will be offered to prove” and “the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.” *Id.*

Notwithstanding Minn. R. Evid. 404(b), Minnesota Statutes provide:

Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Minn. Stat. § 634.20 (2014); *see State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008) (stating that “the stringent procedural requirements of rule 404(b) do not apply to section 634.20 evidence” and that “the statute allows much more latitude than the rule in admitting relationship evidence”). Such evidence is commonly known as relationship evidence. *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010).

Evidence of “domestic conduct” includes evidence of domestic abuse. Minn. Stat. § 634.20. “Domestic abuse” includes assault (fear/harm) and interference with an emergency call when committed against a family or household member, which includes any person with whom the defendant has a child in common and any person with whom

the defendant presently resides or with whom he resided in the past. Minn. Stat. §§ 518B.01, subd. 2(a), (b)(5), 634.20.

“[E]vidence of domestic conduct by the accused against family or household members other than the victim may be admitted pursuant to Minn. Stat. § 634.20” *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015). Appellate courts review the admission of relationship evidence for abuse of discretion. *Matthews*, 779 N.W.2d at 553; *see also State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (“Evidentiary rulings rest within the discretion of the trial court and will not be reversed absent a clear abuse of discretion.”).

Over Powell’s objection, the district court allowed the state to introduce as relationship evidence the testimony of J.K., who lived with Powell during their four-year romantic and sexual relationship and with whom Powell has two children. J.K. testified about two domestic-abuse incidents: (1) an incident in February 2013, when Powell pushed J.K. to the ground in a nightclub parking lot; and (2) a relationship-ending incident in January 2014, when Powell pushed J.K. around their home, punched and choked her, took her phone and broke it in half, threatened to hurt her so badly that she would have to go to the hospital, took her car without her permission and drove around until she got into the car with their baby, and drove recklessly with her and their baby in the car. J.K. also testified that Powell pleaded guilty to domestic assault for the February 2013 incident and pleaded guilty to domestic assault and interference with an emergency call for the January 2014 incident.

Powell first argues that the challenged relationship evidence has “little, if any, probative value to the question of whether [he] assaulted [E.G.]” He contends that

relationship evidence is no more than nonprobative character or propensity evidence unless the state demonstrates a need to provide context for or to fill in pieces missing from its theory of the case. But the supreme court has expressly declined “to require that trial courts engage in an independent analysis of the state’s need for section 634.20 evidence before it is admitted,” *Bell*, 719 N.W.2d at 639, and this court has stated that “evidence showing how a defendant treats his family or household members, such as his former spouses or other girlfriends, sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010); *see also State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (stating that “[t]his court has observed that the probative value of relationship evidence involving a family or household member is high”).

Powell next argues that the “minimal probative value, if any, the relationship evidence had was substantially outweighed by the danger of unfair prejudice,” because “not only did the jury hear about the prior assaults, it also heard that . . . Powell was charged with, and pleaded guilty to, the exact same crime charged in this case.” Powell contends that “[w]hen [he] was trying to decide whether to stipulate to his prior convictions to enhance the domestic assault charge to a felony, the district court explained to him that he could choose to stipulate so that the jury did not have to hear about them,” but “the benefit he gained from not having the jury hear this highly prejudicial information . . . was obliterated when the state introduced that very evidence through [J.K.]” as relationship evidence.

“[U]nfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *Bell*, 719 N.W.2d at 641 (quotation omitted). Powell stipulated to his two qualified domestic violence-related offense convictions in order to keep the jury from hearing evidence about those convictions. The prosecutor nevertheless elicited J.K.’s testimony that Powell was charged with and pleaded guilty to the crimes that resulted in the stipulated convictions, which reduced the benefit of the stipulation. While we do not endorse the prosecutor’s actions, the state correctly notes that Powell’s attorney reduced the danger of unfair prejudice from J.K.’s testimony about the prior charges and guilty pleas by arguing in closing:

Yeah, [J.K.] was assaulted by Michael Powell Twice she was assaulted. Twice Mr. Powell walked into a court and said, “I did it.” Twice he walked into a court and he pled guilty. And one of the first things the Judge told you here today is that he has pled not guilty to this charge. He’s owned up to when he’s done it before. He did a bad thing. He did an inexcusable thing, and he did a thing that he regrets. But that was then. There is no evidence to show that . . . he did it again.

With regard to J.K.’s testimony about the January 2014 incident, Powell claims that “[l]ittle could inflame the jury’s passions or undermine [the] presumption of innocence more than hearing about . . . [him] assaulting [J.K.] in the presence of their baby.” But Powell fails to explain how J.K.’s description of her physical assault by Powell in the presence of their baby was more inflammatory than E.G.’s description of her physical assault by Powell in the presence of her six-year-old grandchild. *Cf. State v. Beane*, 840 N.W.2d 848, 852 (Minn. App. 2013) (“It is difficult for us to determine how evidence that [defendant] choked [victim] in March could have inflamed the jury’s passions against him

any more than what he did a month later, on the night he was arrested.”), *review denied* (Minn. Mar. 18, 2014). In any event, the danger of unfair prejudice was reduced by the cautionary instruction that the jury heard both before and after J.K.’s testimony, which included the following:

Mr. Powell is not being tried for and may not be convicted of any offense other than the charged offense in this case. You are not to convict Mr. Powell on the basis of any other conduct you believe he may have engaged in. To do so might result in unjust double punishments and quite simply it would be wrong.

See State v. Andersen, ___ N.W.2d ___, ___, 2017 WL 2837154, at *3 (Minn. App. July 3, 2017) (stating that “cautionary instructions lessened any probability that the jury would rely improperly on relationship evidence”).

We recognize that J.K.’s testimony about the January 2014 incident mirrors the story that E.G. told on the stand: a romantic or sexual relationship, a physical assault that included pushing and choking, a verbal threat of extreme violence, taking or disabling the victim’s phone, and taking the victim’s vehicle without her permission. But, as stated by the supreme court, “unfair prejudice is not merely damaging evidence, even severely damaging evidence.” *Bell*, 719 N.W.2d at 641 (quotation omitted). To the extent that the challenged relationship evidence shed light on how Powell interacted with a former household member, and thereby bolstered E.G.’s credibility, the evidence—though damaging—served its intended statutory purpose. *See Valentine*, 787 N.W.2d at 637 (“[T]he rationale for admitting relationship evidence under section 634.20 is to illuminate the relationship between the defendant and the alleged victim and to put the alleged crime

in the context of that relationship. Obviously, evidence showing how a defendant treats his family or household members, such as his former spouses or other girlfriends, sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” (citation omitted)).

Finally, our research has revealed no case in which the supreme court concluded that the probative value of relationship evidence was substantially outweighed by the danger of unfair prejudice, and the sole published opinion in which this court reached that conclusion is inapposite. *See State v. O’Meara*, 755 N.W.2d 29, 34 (Minn. App. 2008) (holding that evidence of domestic conduct “is so unfairly prejudicial that it inherently violates the probative/prejudicial balancing test” when defendant has been tried and acquitted of charges arising from that domestic conduct). Accordingly, we conclude that the district court did not abuse its discretion in admitting the challenged relationship evidence.

Affirmed.