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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0463**

State of Minnesota,
Respondent,

vs.

Tyrone Michael Strother,
Appellant.

**Filed January 14, 2019
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-17-17769

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, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of burglary, arguing that the district court abused its discretion by admitting relationship evidence at his jury trial on the underlying charges. Appellant also makes several pro se arguments. We affirm.

FACTS

Respondent State of Minnesota charged appellant Tyrone Michael Strother with felony domestic assault and three counts of first-degree burglary. The amended complaint alleged that on July 15, 2017, Strother forcibly entered the home of S.S.W., his ex-girlfriend, while S.S.W. and her children were in the home. The amended complaint further alleged that Strother committed an assault by intentionally causing S.S.W. to fear immediate bodily harm and that he damaged property within her home.

At trial, S.S.W. testified that Strother is the father of her two youngest children. As to the charged offense, S.S.W. testified that she was sleeping in her living room with her children. S.S.W. heard Strother outside “ranting and raving.” He shouted, “Open the door, and if you don’t open it I’m going to kick it in.” S.S.W. testified that the front door “flew open” and that she saw “wood fly all over.” Strother was not living with S.S.W. at that time, and she had told him that he could not come over anymore. When Strother kicked down the front door, S.S.W. immediately left through a different door, because she was afraid and “didn’t want to get beat up again.”

S.S.W. called 911 and reported that Strother had broken into her home and damaged furniture and a mirror. When S.S.W. returned to her home after making the 911 call, it was

“destroyed.” The state introduced photographs that showed extensive damage to the front door of S.S.W.’s home, a broken mirror and end table, and other damage in the home.

Police officers testified that they responded to S.S.W.’s home following the 911 call and received information that Strother was nearby. They spotted Strother and apprehended him after a short foot chase. Strother’s demeanor and speech indicated that he was intoxicated. The officers arrested Strother and transported him to jail. When the police took Strother into custody, they served him with an ex parte order for protection (OFP) on behalf of S.S.W. and her children that had been granted on June 21, 2017.

The state moved to admit relationship evidence at Strother’s trial, including evidence regarding an incident that occurred on June 17, 2017, and led S.S.W. to petition for the June 21 OFP. The state also requested a jury instruction regarding the proper use of relationship evidence. The district court granted both requests.

As to the June 17 incident, S.S.W. testified that she and Strother “got into a physical altercation” and that she “ended up with two swell[ed] eyes closed,” “a big cheek,” and “hair loss.” The June 17 incident occurred in S.S.W.’s home, while her children were sleeping upstairs. The next day, S.S.W. went to the Hennepin County Government Center and attempted to obtain an OFP against Strother. She obtained the OFP on June 21.

Before S.S.W. testified regarding the June 17 incident, the district court instructed the jury regarding the proper use of that evidence:

Members of the Jury, it’s my understanding that you may hear evidence right now that—evidence of conduct that’s alleged to have occurred by [Strother] on or about June 17th of 2017. The evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship

between [Strother] and [S.S.W.] in order to assist you in determining whether [Strother] committed the acts with which he's charged in the complaint which, again, it's burglary and domestic assault.

The defendant is not being tried for any of the alleged conduct from on or about June 17th. You are not to, obviously, convict him in this case based upon any allegation from June 17th, it's really just presenting relationship evidence to you.

In its final instructions to the jury, the district court gave a similar instruction regarding the limited purpose for which the relationship evidence had been admitted.

The jury found Strother guilty of domestic assault and two counts of burglary.¹ The district court entered judgment of conviction on one of the burglary offenses and sentenced Strother to serve a 108-month prison term. Strother appeals.

DECISION

I.

The primary issue in this appeal is the district court's admission of evidence regarding the June 17, 2017 incident. Minn. Stat. § 634.20 (2018) provides for admission of what is known as "relationship evidence." *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). "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" Minn. Stat. § 634.20.² "'Domestic conduct' includes, but is not limited to, evidence of domestic

¹ The state dismissed one of the first-degree burglary counts at trial.

² The Minnesota Supreme Court adopted section 634.20 as a rule of evidence in *McCoy*, but only "for the admission of evidence of similar conduct by the accused against the

abuse” *Id.* Relationship evidence “assist[s] the jury by providing a context with which it [can] better judge the credibility of the principals in the relationship.” *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). An appellate court reviews the district court’s evidentiary rulings regarding admission of relationship evidence for abuse of discretion. *Matthews*, 779 N.W.2d at 553.

Strother contends that the district court “committed reversible error by admitting the relationship evidence involving SSW because the probative value, if any, was substantially outweighed by the danger of unfair prejudice.” “When balancing the probative value against the potential prejudice, unfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted). A limiting instruction from the district court “lessen[s] the probability of undue weight being given by the jury to the evidence.” *State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Oct. 29, 2008).

alleged victim of domestic abuse.” 682 N.W.2d at 160, 161 (emphasis added). Then, in *State v. Moore*, the supreme court impliedly extended *McCoy* to allow the admission of similar conduct by the accused against other family or household members. See 846 N.W.2d 83, 91-92 (Minn. 2014) (allowing the admission of evidence regarding defendant’s history of abusing former spouse). “To remove any doubt,” in *State v. Fraga*, the supreme court made it clear that “evidence of domestic conduct by the accused against family or household members other than the victim may be admitted pursuant to Minn. Stat. § 634.20, which, as a matter of comity, we adopt as a rule of evidence.” 864 N.W.2d 615, 627 (Minn. 2015).

“Evidence is relevant and has probative value when it, in some degree, advances the inquiry.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). The circumstances of the June 17 incident were relevant because they explained why S.S.W. called the police and why she might not want Strother in her home, even though he is the father of her two youngest children. In addition, Strother challenged S.S.W.’s credibility at trial, arguing that she fabricated the alleged offense and lied to the police. S.S.W.’s testimony about the prior domestic incident on June 17 provided information regarding the nature of her relationship with Strother and a context within which the jury could assess her demeanor in court, her actions on the night of the charged offenses, and her credibility as a witness. Moreover, any potential prejudice from admission of the relationship evidence was mitigated by the district court’s use of two cautionary instructions. *See State v. Andersen*, 900 N.W.2d 438, 441-42 (Minn. App. 2017) (noting that “the district court’s cautionary instructions lessened any probability that the jury would rely improperly on relationship evidence”).

In support of his argument that the admission of domestic-abuse relationship evidence was unfairly prejudicial, Strother asserts that S.S.W.’s testimony had “little, if any, probative value.” He points to the 911 call, the testimony of S.S.W. and two police officers, as well as the photographic evidence, and argues that “[g]iven the evidence the State presented to the jury, there was no need for the jury to hear about the prior June bad-act evidence.”

Essentially, Strother argues for application of a need-based test for the admission of relationship evidence under Minn. Stat. § 634.20. In *Bell*, the defendant argued that district

courts should be required to consider “the state’s need for the evidence before admitting evidence under section 634.20.” 719 N.W.2d at 639. The supreme court declined to adopt this approach, noting that “the need for section 634.20 evidence is naturally considered as part of the assessment of the probative value versus prejudicial effect of the evidence.” *Id.* This court rejected a similar need-based approach in *State v. Meyer*, 749 N.W.2d 844, 848-49 (Minn. App. 2008). Following *Bell* and *Meyer*, we reject Strother’s need-based analysis.

Strother also asserts, “The unfair prejudice in this case lies in the dangerous influence other bad acts can have on a jury’s decision-making process.” He argues that “[a]llowing the jury to hear the details of the alleged June 2017 assault was nothing short of inflammatory because it reflected primarily on [Strother’s] bad character.” He further argues that “the jury’s decision-making process was clouded by the evidence of the June conduct” because it “allowed the jury to infer that if [Strother] had engaged in such conduct in the past, he also must have committed the charged crimes or, at the very least, deserved punishment because of his prior conduct.”

The state counters that, if the court were to accept that argument, section 634.20 “would in effect be rendered void.” The state argues that “[n]o domestic-abuse relationship evidence could meet the bar [Strother] wishes to set, since in every case admission of the evidence would carry such a great and inherent risk of unfair prejudice that it would outweigh any possible probative value.” The state argues that such an outcome “clearly was not the legislature’s intent when it enacted Minn. Stat. § 634.20.” The state also notes that the supreme court has “on numerous occasions recognized the inherent value of

evidence of past acts of violence committed by the same defendant against the same victim.” *Bell*, 719 N.W.2d at 641 (quotation omitted).

The state has the better argument. Although there are risks attendant to the admission of relationship evidence, section 634.20 allows admission under certain circumstances. The district court did not abuse its discretion by admitting the relationship evidence under the circumstances here.

II.

Strother filed two supplemental pro se briefs that devote significant attention to the trial evidence and the credibility of the state’s witnesses. We construe his arguments as a challenge to the sufficiency of the evidence to sustain his conviction.

When considering a claim of insufficient evidence, an appellate court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). An appellate court “assume[s] that the jury believed the state’s witnesses and disbelieved contrary evidence.” *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). An appellate court will not disturb a guilty verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was proved guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Strother’s claim of insufficient evidence rests on assertions that the state’s witnesses lied, were unable to remember events or did not clearly remember events, and provided testimony and reports that were inconsistent with other evidence. “Assessing the

credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the jury." *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006). Strother's challenge to the credibility of the state's witnesses is therefore unavailing.

Strother also argues that the OFP that S.S.W. obtained was "forged." Strother's assertion that the June 21 OFP was "forged" similarly relates to witness credibility and is therefore unavailing. *See id.*

To establish Strother's guilt under Minn. Stat. § 609.582, subd. 1(c) (2016), the state had to prove that Strother entered S.S.W.'s home without consent and committed an assault while in the building. *See* Minn. Stat. § 609.02, subd. 10 (2016) ("Assault" is: (1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another."). Our review of the record—including the testimony of S.S.W. and the police officers and the photographs of damage inside S.S.W.'s home—satisfies us that the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that Strother was proved guilty of the burglary. We therefore do not disturb the verdict.

Strother raises several other pro se issues including ineffective assistance of counsel, prosecutorial misconduct, and judicial bias. Strother's assertions of error regarding these issues include the following: "Prosecutor . . . telling [the district court judge], she and . . . my public defender, have been emailing and communicating back and forth about this case regularly"; "[the district court judge] had me convicted before the trial even started"; and

“[my] Public Defender . . . showing decisive manipulation convincing me into admitting guilt in front of your face.”

Strother also asserts that the trial transcripts “have been altered to some degree, to dismiss or to cover up court misconduct,” and that the pretrial and sentencing transcripts were altered. But Strother does not specify what is missing from, or was added to, the transcripts, other than alleging that the prosecutor was listed as a participant at a particular hearing even though she was not present.

We have considered Strother’s pro se arguments and conclude that none provides a basis for appellate relief. *See Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004) (rejecting pro se arguments without detailed discussion).

Affirmed.