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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1450**

State of Minnesota,
Respondent,

vs.

Kyle Delane Johnson,
Appellant.

**Filed July 15, 2019
Affirmed
Halbrooks, Judge**

Crow Wing County District Court
File No. 18-CR-18-1622

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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Assistant County Attorney, Minnesota County Attorneys Association, St. Paul, Minnesota
(for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Slieter, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of domestic assault, arguing that the district court abused its discretion by admitting relationship evidence. We affirm.

FACTS

On April 17, 2018, 17-year-old M.E. was getting ready for bed when she heard people screaming outside. She looked out the window and observed a man and woman in the alley behind her house. They were using profane language, and the woman was hitting the man on the chest in order to push him away. M.E. heard the man say, “You don’t deserve to be wearing my hat,” as he removed a hat from the woman’s head. After that, M.E. observed the man grab the woman’s hair “and start[] whipping her hair around.” According to M.E., the woman’s “body followed but she didn’t fall.” The woman started crying. M.E. called 911 to report what she had witnessed and provide descriptions of the individuals.

When Officer Tim Friis of the Brainerd Police Department responded to the 911 call, he observed a man in the area who matched the description provided by M.E. The man was identified as appellant Kyle Delane Johnson. Law enforcement subsequently located the woman involved in the altercation and identified her as K.S.A., Johnson’s girlfriend. Johnson indicated that he had been in a fight with someone else earlier that day and that “displaced aggression” caused him to later argue with K.S.A. But he denied physically assaulting K.S.A. Officer Friis arrested Johnson, and, during a search incident

to arrest, discovered a small plastic bag of a white substance that he believed to be methamphetamine. The substance later tested positive for methamphetamine.

Respondent State of Minnesota charged Johnson with felony domestic assault, fifth-degree controlled-substance crime, and disorderly conduct.¹ Prior to trial, the state moved in limine to admit relationship evidence, including recordings of nine jail communications between Johnson and K.S.A. The district court ruled that the recordings were admissible as relationship evidence.

Following a court trial, the district court found Johnson guilty of domestic assault and fifth-degree controlled-substance crime. The district court credited M.E.’s testimony that Johnson grabbed K.S.A.’s hair and then “whipped her head around.” The district court did not find K.S.A.’s trial testimony to be credible because it was “grossly contradictory” to what she told law enforcement and the public defender investigator about the incident. After the district court announced the verdict, Johnson waived a presentence investigation and requested immediate sentencing. The district court sentenced Johnson to concurrent terms of 30 months for domestic assault and 21 months for fifth-degree controlled-substance crime. This appeal follows.

D E C I S I O N

Johnson contends that the district court erred by admitting evidence of the jail communications between K.S.A. and himself because they were not “domestic conduct” as defined by the statute. We review a district court’s admission of relationship evidence

¹ The disorderly conduct charge was dismissed prior to trial.

for abuse of discretion. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008). To be entitled to relief, an appellant must show that the district court abused its discretion and that he was prejudiced as a result. *Id.*

Minnesota law has two bases for the admission of relationship evidence—Minn. Stat. § 634.20 (2016) and the common law. A district court may admit evidence of “domestic conduct” by a defendant unless the probative value of the evidence is “substantially outweighed by the danger of unfair prejudice” to the defendant, “or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. Stat. § 634.20. Under the statute:

“Domestic conduct” includes, but is not limited to, evidence of domestic abuse, violation of an order for protection under section 518B.01; violation of a harassment restraining order under section 609.748; or violation of section 609.749 or 609.79, subdivision 1. “Domestic abuse” and “family or household members” have the meanings given under section 518B.01, subdivision 2.

Id.

Under caselaw, relationship evidence may be offered to “show the strained relationship between the accused and the victim” and is especially probative when it contextualizes the charged incident. *State v. Hormann*, 805 N.W.2d 883, 890 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012) (quotation omitted). Relationship evidence admitted under Minn. Stat. § 634.20 is a “subtype” of the broader category of relationship evidence that is admissible under caselaw. *State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006).

Johnson argues that the district court abused its discretion by determining that the jail communications were admissible under Minn. Stat. § 634.20. He asserts that the prosecutor sought admission only under the statute, not based on caselaw, and therefore we must analyze the admission solely under the statute. The state argues that the prosecutor sought admission under both Minn. Stat. § 634.20 and caselaw. We agree with the state.

The state's motion in limine contains two paragraphs addressing the admissibility of the jail communications as relationship evidence. The first explicitly references admission of the evidence under Minn. Stat. § 634.20. But the following paragraph requests that the state be generally permitted to "introduce evidence regarding the history of the relationship between the defendant and the victim," including evidence of the incidents listed in the above paragraph. During the pretrial motion hearing, the prosecutor addressed admission under Minn. Stat. § 634.20, and then stated, "Also, relationship evidence can be used to show the strained relationship between the parties, can show the stresses involved in the parties' relationship. It's evidence that helps establish the relationship in which places the event in context." This argument addresses the requirements for the admission of relationship evidence established by caselaw. *See Hormann*, 805 N.W.2d at 890 (stating that Minnesota caselaw permits the admission of relationship evidence to show the strained relationship between the parties and to place the charged event into proper context).

We conclude that the district court admitted the relationship evidence under both Minn. Stat. § 634.20 and caselaw. And because caselaw addresses the admission of a broader range of relationship evidence, we will analyze the admission of the jail

communications as relationship evidence under caselaw. *See Bell*, 719 N.W.2d at 638 n.4. Relationship evidence is admissible under caselaw when it shows evidence of a strained relationship and helps to place the charged incident into proper context. *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009). Relationship evidence also assists the fact-finder in assessing witness credibility. *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). Here, the jail recordings served that function.

As the district court noted, the communications reflected behavior on the part of Johnson that was “antagonistic, hostile, aggressive, threatening, demeaning, which would be within the heart of relationship evidence.” During the recordings, Johnson is aggressive and controlling, and consistently berates K.S.A. and orders her to pawn her jewelry or panhandle to get money to deposit in his jail account. He accuses her of lying to and cheating on him and encourages her to try to get the charges against him dropped. Thus, the relationship evidence reflected a strained relationship between Johnson and K.S.A.

In addition to showing the strained relationship between Johnson and K.S.A., the jail communications put the charged incident into context and assisted the fact-finder in assessing witness credibility. K.S.A. initially lied to the police and said that she and Johnson were not romantically involved, in the hope of avoiding charges being brought. She later attempted to get the charges dropped and ultimately testified that Johnson had not assaulted her. At trial, Amber Laffin, an expert in domestic-violence victims, testified that victims of domestic abuse often avoid reporting incidents because they fear their partner’s coercive, threatening, and hostile behavior. By showing a strained relationship and Johnson’s history of threatening and hostile behavior, the jail communications helped put

the charged event and K.S.A.'s behavior into context and assisted the district court in evaluating witness credibility.

Johnson next asserts that the district court abused its discretion by admitting the relationship evidence because the potential for unfair prejudice outweighed its probative value. As discussed, the relationship evidence had substantial probative value. And we are not persuaded by Johnson's argument that the evidence was unfairly prejudicial because it reflected poorly on him "as a person and a romantic partner" and "invited the fact-finder to draw a propensity inference that . . . Johnson was likely guilty because he was generally a bad boyfriend." The purpose of relationship evidence is to show a strained relationship between the defendant and victim, and therefore the mere fact that it reflects poorly on the defendant is not a basis to exclude it. And we note that Johnson was tried by the district court, rather than a jury, which further reduces the chance that the evidence was used for an improper purpose. *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009). On this record, we conclude that the district court did not abuse its discretion by admitting the jail communications as relationship evidence.

Finally, we note that, even if the evidence was erroneously admitted, Johnson must show that he was prejudiced as a result. *Lindsey*, 755 N.W.2d at 755. The erroneous admission of evidence is harmless if there is no reasonable probability that the evidence significantly affected the verdict. *State v. Holliday*, 745 N.W.2d 556, 568 (Minn. 2008). The district court's written findings of guilt explicitly state that the district court found Johnson guilty of domestic assault "based on the evidence admitted as to the April 17, 2018 incident without the relationship evidence." While the district court stated that the

relationship evidence “shed[s] light on the ongoing relationship between Mr. Johnson and K.S.A.,” it noted unequivocally that the verdict was not based on the relationship evidence. Consequently, Johnson cannot establish that he was prejudiced by the admission of the jail communications.

Affirmed.