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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1708**

State of Minnesota,
Respondent,

vs.

Santiago Guadalupe Ramirez,
Appellant.

**Filed September 16, 2019
Affirmed
Hooten, Judge**

Kandiyohi County District Court
File No. 34-CR-18-164

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia M. Villalva Lijo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Kirk,
Judge.*

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

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges his convictions for domestic assault, sexual assault, stalking, and OFP violations, arguing that the district court should have severed the assault charges from the other charges and that the district court plainly erred by admitting translated text messages into evidence. We affirm.

FACTS

This case arises from a series of interactions between appellant Santiago Ramirez and his ex-girlfriend, B.C., over the course of nine days. Ramirez and B.C. dated for about 10 years. The couple lived together and had children together. B.C. ended the relationship in November 2017, but allowed Ramirez to continue living in the shared residence until he could find a different place to live. On January 7, 2018, Ramirez entered the bathroom of the residence while B.C. was showering. After she asked him what he was doing, Ramirez entered the shower and told her that he wanted to have sex with her, grabbing her arms and attempting to kiss her. B.C. resisted, pushing Ramirez away and calling for her daughter. At this point, Ramirez stopped trying to have sex with her.

The next day, on January 8, Ramirez came home from work early and tried to convince B.C. to take a shower with him. She refused, and Ramirez became physical with her, telling her she would be having sex with him and forcing her onto the bed. B.C. physically resisted Ramirez, but he ultimately overpowered her and penetrated her. After the sexual assault, B.C. went to the emergency room and was examined. And the following day, she obtained an order for protection (OFP).

On January 10, B.C. received a call at work from Ramirez's sister asking when Ramirez could come by the residence to pick up his possessions. Five days later, B.C. saw Ramirez driving on the street in front of the residence and then later walking across the street. That same day, he also called B.C. at work, though she did not speak with him.

The state charged Ramirez with: third-degree criminal sexual conduct for the January 8 sexual assault; fourth-degree criminal sexual conduct, fifth-degree criminal sexual conduct, and domestic assault for the incident in the shower on January 7; two counts of stalking; and three counts of OFP violations. Ramirez moved to have the sexual-assault charges severed from the other charges. The district court denied the motion, and in its order it addressed whether the domestic-assault charge should also be severed.

Ramirez had a jury trial. B.C. testified about what Ramirez had done to her. And a police officer testified about an interview he conducted with Ramirez in which Ramirez more or less admitted to sexually assaulting B.C. An audio recording of the interview was played for the jury. The state also introduced, as an exhibit, a screenshot of text messages that Ramirez sent to B.C. after the sexual assault apologizing to her. The text messages were in Spanish, but a handwritten English translation of the messages was also on the exhibit. After the state rested, the district court dismissed the two criminal sexual conduct charges related to January 7. The jury found Ramirez guilty of third-degree criminal sexual conduct for the January 8 sexual assault, domestic assault for what took place on January 7, both stalking counts, and two of the three OFP-violation counts. This appeal follows.

DECISION

I. Severance

Ramirez first argues that the district court erred by not severing the sexual- and domestic-assault charges from the stalking- and OFP-violation charges. A district court's decision on the question of whether to sever charges is reviewed de novo. *State v. Fitch*, 884 N.W.2d 367, 378 (Minn. 2016).

A district court must sever charges if the “charges are not related” or, even if the charges are related, if “severance is appropriate to promote a fair determination of the defendant’s guilt or innocence of each offense or charge.” Minn. R. Crim. P. 17.03, subd. 3(1)(a)-(b). Ramirez argues both that the charges are unrelated and that severance was necessary to avoid prejudice at trial.

Because we ultimately conclude that severance was not necessary to avoid prejudice, we do not decide the question of whether the charges are unrelated. Prejudice is “the ultimate question in a severance claim.” *Fitch*, 884 N.W.2d at 379. And even if a district court erred by not severing charges, a new trial is only required if joinder of the charges was “prejudicially erroneous.” *State v. Profit*, 591 N.W.2d 451, 460 (Minn. 1999). Joinder of charges “is not unfairly prejudicial if evidence of each offense would have been admissible at a trial of the other offenses had the offenses been tried separately.” *State v. Kendell*, 723 N.W.2d 597, 608 (Minn. 2006). In this case, that means that evidence for each set of charges would have to be admissible as evidence in a trial on the other set of charges. But this does not require “a searching inquiry regarding whether each individual

piece of evidence would have been admissible”; rather, the question is whether “evidence regarding each offense generally would have been admissible.” *Fitch*, 884 N.W.2d at 379.

Respondent argues that evidence of either set of offenses would have been admissible as evidence in a trial on the other. And Ramirez argues: (1) that the stalking- and OFP-violation offenses would not have been admissible as *Spreigl* evidence at a trial on the domestic- and sexual-assault charges, and (2) that the domestic- and sexual-assault offenses would likely not have been admissible at a trial on the stalking- and OFP-violation charges because the danger of unfair prejudice would outweigh their probative value. We address the admissibility of evidence in each hypothetical trial in turn.

The first question is whether the stalking and OFP-violation offenses would have been admissible as evidence at a trial on the domestic- and sexual-assault charges. One way that the evidence of stalking and OFP violations could be admissible is as relationship evidence. “Evidence of domestic conduct by the accused against the victim of domestic conduct . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury” Minn. Stat. § 634.20 (2018). And the definition of “domestic conduct” includes evidence of domestic abuse and violation of an OFP. *Id.* The conduct underlying the stalking- and OFP-violation charges fits under the definition of domestic conduct.¹

¹ Moreover, the relationship evidence does not have to occur prior to the charged offense in order to be admissible, *State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008), so the fact that the stalking and OFP violations occurred after the domestic and sexual assaults does not affect the analysis.

But even if it constitutes relationship evidence, the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice. “[E]vidence is unfairly prejudicial . . . only if used to persuade by illegitimate means.” *Profit*, 591 N.W.2d at 461 (quotation omitted). And evidence’s probative value is assessed by focusing on “the closeness of the relationship between the other crimes and the charged crimes in terms of time, place and modus operandi.” *Id.* (quotation omitted). In this case, the OFP violations and stalking conduct involved the same victim as the domestic and sexual assaults and all of the relevant events occurred in a period of nine days. We conclude that this relationship evidence is very probative. While this evidence is certainly prejudicial to Ramirez, we are not convinced that it was “used to persuade by illegitimate means,” so we conclude that it is not *unfairly* prejudicial. Accordingly, we conclude that the probative value of the relationship evidence is not substantially outweighed by the danger of unfair prejudice and that the stalking- and OFP-violation offenses would therefore have been admissible at a trial on the domestic- and sexual-assault charges.

The next question is whether evidence of the domestic- and sexual-assault offenses would have been admissible at a trial on the stalking- and OFP-violation charges. One way that this evidence could be admissible is as *Spreigl* evidence. Evidence of crime is not admissible “to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b)(1). But it may “be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.*

In this case, the evidence of the domestic and sexual assaults could be used to prove Ramirez's motive in stalking the victim and violating the OFP. In relevant part, some of the things considered when determining the admissibility of *Spreigl* evidence are: (1) "whether there is clear and convincing evidence that the defendant participated in the prior act"; (2) "whether the evidence is relevant and material to the state's case"; and (3) "whether the probative value of the evidence is outweighed by its potential prejudice to the defendant." *State v. Clark*, 738 N.W.2d 316, 345 (Minn. 2007) (quotations omitted). Ramirez was convicted of domestic assault and criminal sexual conduct, which would indicate that there was more than clear and convincing evidence that he committed those crimes. The evidence would be relevant to a trial on the stalking- and OFP-violation charges because the assaults are what led the victim to obtain the OFP. As for prejudice, while the evidence of the assaults would be prejudicial to Ramirez, it is also probative in explaining Ramirez's motives and the context for his actions. We conclude that the potential prejudice of the evidence would not outweigh its probative value and that the assault offenses would therefore have been admissible at a trial on the stalking- and OFP-violation charges.

Because the evidence of each set of charges would have been admissible as evidence at a trial on the other, we conclude that there was no prejudice to Ramirez in not severing the charges.

II. Text Messages

Ramirez next argues that the admission at trial of the translation of the text messages he sent the victim the day of the sexual assault violated his rights under the Confrontation Clause and constituted inadmissible hearsay warranting a reversal of his conviction.

Confrontation Clause

Ramirez argues that the admission of the translations violated his Confrontation Clause rights. Whether a defendant's Confrontation Clause rights were violated by the admission of evidence is a question of law that we review de novo. *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006).

The Confrontation Clause of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend VI. The Minnesota Constitution's Confrontation Clause is nearly identical, and the same analysis is applied to both the United States and Minnesota versions of the clause. *State v. Holliday*, 745 N.W.2d 556, 564 (Minn. 2008); *see also* Minn. Const. art. I, § 6. “[T]he primary objective behind the adoption of the Confrontation Clause was to regulate the admission of testimonial hearsay by witnesses against the defendant.” *State v. Lopez-Ramos*, 929 N.W.2d 414, 417–18 (Minn. 2019) (explaining the Supreme Court's interpretation of the Confrontation Clause in *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004)). This means that the Confrontation Clause “prohibits ‘admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had had a prior

opportunity for cross-examination.”” *State v. Warsame*, 735 N.W.2d 684, 689 (Minn. 2007) (quoting *Crawford*, 541 U.S. at 53–54, 124 S. Ct. at 1365).

The crucial question in resolving Ramirez’s Confrontation Clause argument is whether the translation was a statement he made or a statement made by the translator. The Minnesota Supreme Court recently released an opinion on a very similar issue. In *State v. Lopez-Ramos*, police officers questioned the appellant with the aid of an over-the-phone interpreter. 929 N.W.2d at 415. They put the interpreter on speakerphone and conducted the interview by asking questions in English which the interpreter would then pose to the appellant in Spanish; the appellant would answer in Spanish, and the interpreter translated the answers into English for the officers. *Id.* During the course of the questioning, the appellant admitted to having sexual intercourse with a 12-year-old girl. *Id.* This admission was introduced at trial through the testimony of a police officer. *Id.* at 416.

The question before the supreme court was whether the admission of these statements violated the Confrontation Clause or constituted inadmissible hearsay. *Id.* at 417. In resolving the Confrontation Clause issue, the supreme court held that the appellant, not the interpreter, was the declarant of the statement and that the use of an interpreter did not implicate the Confrontation Clause. *Id.* at 423. In arriving to this conclusion, the supreme court reasoned that “the role of the interpreter is to relay what the defendant said in another language. In this way, an interpreter is not a witness against the defendant. The interpreter is simply the vehicle for conversion or translation of language.” *Id.* at 419 (citation omitted). Therefore, “use of an interpreter to translate a statement from one language to another does not implicate the Confrontation Clause.” *Id.* at 420.

Ramirez’s case is different in that the statements came in as a written translation rather than as a real-time oral translation. But the logic underlying the *Lopez-Ramos* decision supports applying its holding to written translations as well. One portion of the opinion, in which the supreme court compared an interpreter to a court reporter, is particularly relevant. The supreme court explained:

Court reporters translate oral communications into a written format, conveying information but not adding content. A court reporter is not a witness against the defendant. Rather, court reporters create a written record of court proceedings. When that record is utilized in future proceedings, calling a court reporter to testify is illogical because the written record does not consist of the court reporter’s statements but instead consists of the statements made by the actual declarants in the court proceeding. The same should be true for foreign language interpreters.

Id. at 422 (citation omitted). We conclude that the interpreter’s translation of the text messages into English is analogous to a court reporter “translat[ing] oral communications into a written format.” *Id.* Applying *Lopez-Ramos*, we conclude that there was no violation of Ramirez’s rights under the Confrontation Clause.²

i. Hearsay

Ramirez also argues that the translations constitute inadmissible hearsay. “Evidentiary rulings on hearsay statements are reviewed for clear abuse of discretion.” *State v. Burrell*, 772 N.W.2d 459, 469 (Minn. 2009).

² We also note the supreme court’s explanation that “[i]f an interpreter fails to interpret accurately or fully, or questions regarding authenticity arise, the proper objection is to a lack of foundation, not violation of the Confrontation Clause.” *Id.* Ramirez makes no such argument.

“Hearsay is an out-of-court statement offered to prove the truth of the matter asserted.” *Lopez-Ramos*, 929 N.W.2d at 423; *see also* Minn. R. Evid. 801(c). A party’s own statement is not hearsay when it is offered against that party at trial. Minn. R. Evid. 801(d)(2)(A). In *Lopez-Ramos*, the supreme court concluded that because the appellant was the declarant of the translated statement, the statement was not hearsay per Minn. R. Evid. 801(d)(2)(A). 929 N.W.2d at 423. As we did with Ramirez’s Confrontation Clause argument, we apply *Lopez-Ramos* to this issue and conclude that Ramirez was the declarant of the translations. Accordingly, the translations do not constitute hearsay.

Affirmed.