

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0736**

State of Minnesota,
Respondent,

vs.

Kimberly JoAnn Denne,
Appellant.

**Filed April 26, 2021
Affirmed
Connolly, Judge**

St. Louis County District Court
File No. 69VI-CR-19-699

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

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota; and

Christopher J. Florey, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea M. Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges her convictions for felony threats of violence in violation of Minn. Stat. § 609.713, subd. 1(1) (2018), and misdemeanor domestic assault in violation of Minn. Stat. § 609.2242, subd. 1(1) (2018). She argues that the district court erred by admitting certain relationship evidence because (1) the evidence is not “domestic conduct” under Minn. Stat. § 634.20 (2018), and (2) the probative value of the evidence was substantially outweighed by its prejudicial effect. We affirm.

FACTS

Appellant Kimberly JoAnn Denne and her ex-husband, J.W., lived together for approximately 18 years. They had a son, J.T., in 2002. By February 2018, their relationship had deteriorated and became volatile. Appellant moved out of the home and filed for divorce. She continued to drive her burgundy Chevy Equinox (the Equinox).

According to J.W., J.T. made it clear to both his parents that he wanted to live with J.W. However, he lived with appellant until J.W. obtained joint custody. At a May 2019 family-court hearing, J.T. told the judge, in appellant’s presence, that he wanted to live with J.W.

About a week later, on May 22, 2019, J.T. and J.W. encountered appellant as they were exiting a store. J.W. testified that, as they were walking across traffic lanes to their vehicle, he heard the sound of “someone laying on their horn honking and revving the engine.” He turned and saw the Equinox in the lane behind him. The store’s surveillance-camera footage showed the Equinox driving in the wrong lane, which was the lane closest

to J.W. and J.T., before it went back into the correct lane. J.W. testified that the Equinox came within “half a foot to a foot” of himself and J.T. and that the incident happened so fast that he did not have time to react. J.W. further testified that he saw appellant in the Equinox and that he was able to identify the Equinox as hers because it had the “same stickers [and s]ame vent visors.” As J.W. and J.T. drove out of the parking lot, they passed the Equinox and saw appellant sitting in it. J.W. then drove to the sheriff’s office to report what happened.

The state charged appellant with two counts of felony threats of violence in violation of Minn. Stat. § 609.713, subd. 1(1), and two counts of misdemeanor domestic assault (fear) in violation of Minn. Stat. § 609.2242, subd. 1(1).

Prior to trial, the state sought to admit relationship evidence of a December 2018 incident in which appellant went to J.T.’s school, chased him through the hallways, screamed at him, and attempted to grab him in front of his peers (the December 2018 incident). The state’s purpose in introducing the evidence was to illuminate the hostile relationship between appellant and J.T. on May 22, 2019. The district court admitted the evidence under Minn. Stat. § 634.20 because it “fits squarely into the relationship evidence such that it would assist the trier of fact in . . . illuminating the nature of the relationship and, perhaps, why there may have been anger . . . on May 22, 2019[.]” J.T. testified about the incident at trial, and the district-court record includes two police reports of it.

The jury found appellant guilty of all charges. The district court sentenced him to twelve months and one day in prison on count one and to 15 months in prison on count

two. The district court stayed execution of these sentences and placed appellant on probation for three years. No sentence was pronounced for the misdemeanor convictions.

Appellant challenges the admission of the relationship evidence, arguing that it did not meet the statutory criteria and that it was unduly prejudicial.

DECISION

Challenges to the admission of evidence as contrary to the plain meaning of the statutory provision that governs the admissibility of that evidence presents a question of statutory interpretation that we review de novo. *State v. Barnslater*, 786 N.W.2d 646, 650 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010).

An appellate court reviews a district court’s decision to admit relationship evidence for an abuse of discretion. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). A district court abuses its discretion “when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). This court “will not overturn a district court’s evidentiary rulings unless appellant shows a clear abuse of discretion and that this abuse resulted in prejudice to [appellant].” *State v. Steward*, 645 N.W.2d 115, 120 (Minn. 2002).

I. The relationship evidence satisfies Minn. Stat. § 634.20.

Minn. Stat. § 634.20 states:

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. “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; violation of a domestic abuse no contact order under section 629.75; 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.

(Emphasis added).

Appellant argues that evidence of the December 2018 incident admitted by the district court did not constitute “domestic conduct” because her behavior did not involve assaultive behavior, threatening behavior, or the violation of a protective order. Her argument is unpersuasive.

“A court interprets a statute to discern legislative intent.” *State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008). When analyzing legislative intent, courts “attempt to avoid interpretations that would render a word or phrase superfluous, void, or insignificant, thereby ensuring each word in a statute is given effect.” *State v. Thompson*, 950 N.W.2d 65, 69 (Minn. 2020).

The plain language of the statute states that “‘domestic conduct’ includes, but is not limited to, evidence of domestic abuse, violation of an order for protection . . . violation of a harassment restraining order. . . .” Minn. Stat. § 634.20. The phrase “but is not limited to” signals that the following examples are not the *only* ways in which an act can constitute “domestic conduct.” To interpret the statute otherwise would render the phrase “but is not limited to” superfluous.

Furthermore, legislative history supports the position that “domestic conduct” is not limited to domestic abuse or violation of a protective order. The statute formerly permitted evidence of “similar conduct” that included but was not limited to domestic abuse and violation of protection orders. *See* Minn. Stat. § 634.20 (2012). The legislature amended that language to include the broader phrase “domestic conduct,” which includes domestic behavior even if it is not necessarily “similar” to abuse or violation of a court order. *See* Minn. Stat. § 634.20 (2018).

Minnesota caselaw also supports the view that “domestic conduct” includes more than just domestic abuse or violation of a protective order. *See State v. McCurry*, 770 N.W.2d 553, 560 (Minn. App. 2009) (stating that “the ‘not limited to’ language is more likely meant to encompass general testimony about the relationship”), *review denied* (Minn. Oct. 28, 2009). In *Andersen*, this court found that the district court did not abuse its discretion by admitting evidence pursuant to Minn. Stat. § 634.20 of Andersen’s attempt to “manipulate, control, and restrain” the victim. *Andersen*, 900 N.W.2d at 441.

Here, the December 2018 incident is within the bounds of Minn. Stat. § 634.20. Appellant and J.T. are family members; this satisfies the “domestic” requirement. The conduct involved was of a nature that scared J.T., and it caused such a disruption at the school that two police officers had to assist in removing appellant from the hallways and placing her in a private room until she calmed down. This conduct sheds light on the relationship between appellant and J.T., and the evidence was admitted for that purpose.

Because legislative intent, legislative history, and caselaw support the position that the relationship evidence here meets the definition of “domestic conduct” under Minn. Stat.

§ 634.20, the district court did not err when it admitted evidence of the December 2018 incident.

II. The admission of the relationship evidence was not unduly prejudicial.

The district court did not err by admitting the relationship evidence because its probative value was not substantially outweighed by its potential for unfair prejudice. Unfair prejudice is “the capacity of some . . . evidence to lure the fact-finder into declaring guilt on a ground different from proof specific to the offense charged.” *State v. Smith*, 749 N.W.2d 88, 94 (Minn. App. 2008). Unlike evidence admitted under Minn. R. Evid. 404(b), evidence of prior domestic conduct is admissible under Minn. Stat. § 634.20 to shed light on the relationship of the parties so that jurors can put the crime in context and better judge the credibility of the principals. *State v. Word*, 755 N.W.2d 776, 783-84 (Minn. App. 2008).

The evidence was admitted for the sole purpose of shedding light on the relationship between appellant and J.T. at the time of the charged offenses. Appellant argues that this evidence was not “needed,” but necessity is not the standard for admissibility of evidence of domestic conduct. The relationship evidence here illustrated the hostile attitude that appellant has towards J.T., especially as it related to J.T.’s preference to reside with J.W. This clearly aided the jurors in putting the charged crime into context as well as in judging the credibility of appellant, J.T., and J.W.

Moreover, the district court took three steps to ensure that the evidence would not result in unfair prejudice. First, the testimony regarding the incident makes up only about three pages of the trial transcript and was a very small portion of what the jury heard.

Second, the district court directed that the December 2018 incident not be mentioned in opening statements, which minimized any potential prejudice developing at the beginning of the trial. Third, the district court used limiting instructions and denied the admission of the evidence as *Spreigl* evidence under Minn. R. Evid. 404(b). All three steps illustrate the sound exercise of the district court's discretion and minimized the potential for the relationship evidence to be overly prejudicial.

Even if this court concluded that the district court had abused its discretion by admitting the relationship evidence, any error was harmless. To find otherwise, the court would be required to conclude that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). The evidence against appellant was overwhelming. Both the testimony of J.W. and J.T. and the surveillance camera footage from the store clearly show that appellant was purposely driving in a dangerous manner to scare J.W. and J.T. For all these reasons, we conclude that there is not a reasonable probability that the relationship evidence significantly affected the verdict.

Affirmed.