

*This opinion is nonprecedential except as provided by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
A20-0983**

State of Minnesota,
Respondent,

vs.

Ryan Percy Peterson,
Appellant.

**Filed June 1, 2021
Affirmed
Connolly, Judge**

Lyon County District Court
File No. 42-CR-19-870

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

Richard R. Maes, Lyon County Attorney, Abby J. Wikelius, Assistant County Attorney,
Marshall, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges his convictions for threats of violence and unlawful possession
of a firearm, arguing that the district court abused its discretion by admitting relationship

evidence involving appellant's former girlfriend and by excluding evidence of an interaction between appellant and the victim two weeks after the charged offenses. Because we see no abuse of discretion in these evidentiary decisions and no harm to appellant resulting from either of them, we affirm.

FACTS

After appellant Ryan Peterson and S.N. got to know each other online, S.N. and her four sons moved into appellant's home, where appellant's children also sometimes lived. In February 2019, S.N. had a daughter. Appellant was angry when he learned he was not the father of the baby, and that was a partial cause of a conflict between him and S.N. on the night of April 28-29, 2019. S.N. was on the couch in the living room, feeding the baby, and her youngest son was sleeping in a portable crib nearby. Appellant kicked a fan towards S.N., flipped over a coffee table, and pointed a gun at her and the baby. Appellant's oldest son, T.F., a fourth-grader, woke up, came into the living room, looked at appellant with the gun, and told appellant he had to use the bathroom. Appellant left the house, and S.N. contacted her sister with a video-messaging program to tell her about the incident.

On May 3, 2019, S.N. received a call from T.F.'s school. T.F. had reported the incident to the principal. After a sheriff's deputy at the school investigated, appellant was charged with second-degree assault, threatening a crime of violence, domestic assault, and being an ineligible person in possession of a firearm.

Following a hearing on pretrial motions, the district court granted in part the state's motion to introduce evidence from C.K. about her relationship with appellant, with whom

she has two children. The district court also provisionally denied appellant's motion to introduce evidence of an audio recording of an interaction between himself and S.N. on May 12, 2019 (the May 12 interaction), but told appellant that he could "renew his motion depending on the testimony of [S.N]."

At the jury trial, C.K. testified as to her prior relationship with appellant. S.N. and appellant also testified, but appellant did not renew his motion to admit evidence of the May 12 interaction. Appellant was found not guilty of second-degree assault, but guilty of the other charges.

Although appellant did not renew his motion to introduce evidence of the May 12 interaction at trial, he moved for a new trial on the ground that the district court erred by denying his pretrial motion to admit that evidence. His motion for a new trial was denied.

Appellant was sentenced to a 60-month prison sentence for possession of a firearm by an ineligible person and to an 18-month prison sentence for threatening a crime of violence; no sentence was imposed for felony domestic assault.

On appeal, he challenges the denial of his motion for a new trial and the admission of C.K.'s relationship evidence.¹

¹ Appellant also submitted, pro se, a lengthy supplemental brief raising issues of ineffective assistance of counsel, denial of his right to a fair trial, admission and exclusion of evidence, and denial of his request for a downward departure in his sentence. Appellant advances no legal support for any of these issues and has therefore waived them. See *State v. Grecinger*, 569 N.W.2d 189, 193 n.8 (Minn. 1997) (noting that issues not argued in a brief are deemed waived on appeal).

DECISION

1. Admission of Relationship Evidence

“Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members [i.e., relationship evidence], 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 (2020). “[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, which, as a matter of comity, we adopt as a rule of evidence.” *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015).

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). An appellate court “will not overturn a district court’s evidentiary rulings unless [the defendant] shows a clear abuse of discretion and that this abuse resulted in prejudice to [the defendant].” *State v. Steward*, 645 N.W.2d 115, 120 (Minn. 2002).

C.K. testified about two incidents during the time that she and appellant had lived together from 2006 to 2016. They are the parents of two daughters, M.P., ten, and S.P., four, whose custody they shared. On August 30, 2016, C.K. saw appellant near her car with a sharp instrument and asked what he was doing. He replied, “Slashing your tires”; added, “I’m going to kill you, b----”; and came towards her with the instrument. She ran into the house and called the police. On September 7, 2017, appellant brought M.P. to C.K.’s apartment and threatened, in front of M.P., to kill C.K., who again called the police.

The district court explained its decision to partially grant the state’s motion to admit C.K.’s testimony about these incidents.

[These] incidents both demonstrate similar conduct by [appellant] against C.K. who was a family or household member. The evidence has probative value in that it may shed light for the jury on how [appellant] interacts with romantic partners. Any prejudice resulting from the admission of the evidence is not unfair nor does it substantially outweigh the probative value. Because the instances are specifically identifiable, the state has shown the existence of the prior incidents by a preponderance of the evidence.

Appellant raises three arguments against the admission of the relationship evidence. First he argues that, by saying the evidence was admitted to “shed light for the jury on how [appellant] interacts with romantic partners,” the district court indicated the evidence was “propensity” evidence, which is inadmissible. *See Old Chief v. United States*, 519 U.S. 172, 180-81, 117 S. Ct. 644, 650 (1997) (noting that one “improper ground[]” for admitting evidence is “generalizing a defendant’s earlier bad act into bad character and taking that as raising the odds that he did the later bad act now charged”). Here, there was no “generalizing” of appellant’s acts with C.K. into evidence of his having a “bad character”; the purpose of the evidence was showing the jury how appellant had interacted with C.K. while they were living together in a romantic relationship, which would have shed light on how he interacted with S.N. a few years later. *See State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010) (“[E]vidence showing how a defendant treats [or treated] his family or household members . . . sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.”), *review denied* (Minn. Nov. 16, 2010).

Second, appellant argues that the evidence lacked probative value because it “was older conduct that involved a former girlfriend who was not the victim in the charged offense” and it “is only probative if the evidence is considered improper propensity evidence.”² But caselaw refutes this argument. *See State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (“[T]he probative value of relationship evidence involving a family or household member is high . . .”). Furthermore, the evidence would have assisted the jury in evaluating appellant’s credibility. *See State v. Word*, 755 N.W.2d 776, 783-84 (Minn. App. 2008) (holding that evidence of prior domestic conduct is admissible so jurors can put the crime in context and better judge the credibility of the principals).

Third, appellant argues that he was unduly prejudiced by the relationship evidence because the other evidence against him was not strong, i.e., that he was convicted because of C.K.’s testimony as to what he had done to her in 2016 and 2017, not because of S.N.’s testimony as to what he did to her in 2019. But the district court explicitly instructed the jury that it was “not to convict [appellant] on the basis of the conduct on . . . August 30, 2016, or September 7, 2017 [i.e., conduct with C.K.]. To do so might result in unjust double punishment.” The jury was also instructed that it was to consider C.K.’s testimony “for the limited purpose of demonstrating the nature and extent of the relationship between [appellant] and [C.K.] in order to assist [it] in determining whether [appellant] committed those acts with which [he] is charged in the complaint.” Moreover, the prejudicial effect

² Appellant’s argument would make *any* evidence of a former crime with another victim inadmissible as propensity evidence, a view explicitly contradicted by *State v. Spreigl*, 139 N.W.2d 167, 172 (Minn. 1965).

of relationship evidence introduced under Minn. Stat. § 634.20 is mitigated by a district court's instructions to the jury. *See, e.g., State v. Waino*, 611 N.W.2d 575, 579 (Minn. App. 2000).

The district court did not abuse its discretion in admitting evidence of appellant's relationship with C.K.

2. Exclusion of Evidence of the May 12 Interaction

This court does not overturn a district court's evidentiary rulings absent showings of both clear abuse of the district court's discretion and prejudice resulting from that abuse. *Steward*, 645 N.W.2d at 120.

The evidence of the May 12 interaction is a recording made by appellant during which S.N. twice asks him to "get the f**k way from me." At one point, she says, "I'm going to call the cops"; appellant says, "About what[?]" and S.N. continues, "and tell them you put a gun to my head." Appellant argues that, "If . . . [S.N.] was threatening to call the police and falsely report [that appellant] threatened her with a gun on or about May 11, then [the recording] would be evidence to show that [S.N.] fabricated the charged [April 28-29] incident."³

The district court explained its denial of appellant's pretrial motion to admit into evidence his recording of the May 12 interaction.

The "threshold test" for the admission of evidence is relevance. *See* Minn. R. Evid. 401 cmt. "Essentially, it is a test of logic, an assessment of probative value. Evidence must have some probative value or it should not be admitted." *Id.*

³ There is no evidence that appellant did not threaten S.N. with a gun on or about May 11 as well as on April 28-29.

Stated another way, “any evidence is relevant which logically tends to prove or disprove a material fact in issue.” *Id.* [Appellant] has not shown, in the case at hand, what material fact in issue the recording tends to prove. The proffered evidence is more in the nature of character evidence of the victim [S.N.]. . . . Because [appellant] cannot meet the threshold showing of relevance, the evidence is provisionally denied. *However, [appellant] may renew his motion depending on the testimony of [S.N.].*

(Emphasis added.) Appellant did not seek to renew his motion after S.N. testified, but argues on appeal that he is entitled to a new trial because the district court erred in excluding evidence of the May 12 interaction.

A defendant has a constitutional right to present a complete defense, which includes the right to call and examine witnesses. *State v. Reese*, 692 N.W.2d 736, 740 (Minn. 2005). Evidence of a witness’s bias is generally “relevant as discrediting the witness and affecting the weight of his testimony.” *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995) (quotations omitted). “But not everything tends to show bias, and courts may exclude evidence that is only marginally useful for this purpose”; they may also exclude “evidence of extraneous matters based on concerns about such things as harassment, decision making on an improper basis, [or] confusion of the issues.” *Id.* at 640-41. Moreover, there is no abuse of discretion when a court restricts a defendant’s attempt to show bias if the jury has sufficient other information to make a “discriminating appraisal of the witness’s bias or motive to fabricate.” *Id.* at 641 (quotation omitted).

Here, the record indicates that, before May 12, S.N. had said multiple times that appellant threatened her with a gun; she said it on the video messaging, on a text to her sister, and to the principal of her son’s school. The jury was aware of these statements.

Moreover, the jury saw S.N. on the witness stand, it had heard some of S.N.'s testimony be impeached, notably her description of the gun, and it heard that she gave law enforcement differing accounts of the incident and different dates on which it occurred. The jury's acquittal of appellant of second-degree assault indicates that it had made a "discriminating appraisal" of S.N.'s testimony. In light of these examples, the district court did not abuse its discretion by excluding the recording of the May 12 interaction.

Appellant also argues that the May 12 interaction "is consistent with the defense theory that there was no gun involved in the [April 28-29] incident and is relevant and exculpatory." But appellant does not explain how the fact that S.N. said on May 12 that she would tell the police that appellant threatened her with a gun makes it more likely that, two weeks earlier, she had fabricated the story she told the police about appellant threatening her with a gun. Moreover, that story was corroborated by her son's report of the incident to the principal of his school.

Appellant also argues that the state "opened the door" to the May 12 interaction when it admitted the relationship evidence of how appellant treated C.K. in 2016 and 2017 because the recording of the May 12 interaction showed that appellant "calmly interacted with a romantic partner who was obviously angry and agitated." But the transcript of the interaction does not reflect that appellant was calm while only S.N. was angry: appellant says he is going to tell the police "of my recordings of your threatening my f**king life while I stand here calmly." Although the recording does not show that S.N. threatened his life in any way, appellant later says, after what appears to be S.N. spitting, "Alright you got me calling the cops right now." This was not "calm interaction."

Finally, appellant argues that he is entitled to a new trial because, if evidence of the May 12 interaction had been admitted, the verdict might have been different: that evidence would have rebutted the relationship evidence and challenged S.N.'s credibility. But S.N.'s credibility was effectively challenged through her own testimony, and the evidence that appellant treated C.K. abusively in 2016-2017 would not have rebutted the evidence that he also treated S.N. abusively in April 2019.

Affirmed.