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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1021**

State of Minnesota,
Respondent,

vs.

Melvin Ronaldo Serrano-Santana,
Appellant.

**Filed May 17, 2021
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-19-6526

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions for first-degree burglary, threats of violence, and domestic assault by strangulation, arguing that he is entitled to a new trial because the district court abused its discretion by admitting relationship evidence and by failing to sua sponte provide a cautionary instruction regarding the proper use of that evidence. Appellant also argues that the evidence is insufficient to support his conviction of domestic assault by strangulation as a matter of law. We affirm.

FACTS

Respondent State of Minnesota charged appellant Melvin Serrano-Santana with first-degree burglary, threats of violence, domestic assault by strangulation, and violation of a domestic-abuse-no-contact order (DANCO) based on conduct that occurred on August 28, 2019. At trial, the state presented evidence that Serrano-Santana and C.R. began a romantic relationship in 2017. C.R. testified that Serrano-Santana was a “good man” at the beginning of their relationship, but “once he started feeling more comfortable with [her], he started maltreating [her].” According to C.R., Serrano-Santana refused to allow her to speak with her friends, broke her phone, and monitored her whereabouts with a tracking application on her phone. C.R. also claimed that Serrano-Santana once held a knife to her neck and prevented her from going to work for two days.

In February 2019, C.R. obtained a DANCO against Serrano-Santana. On May 15, 2019, C.R. came home from work to find Serrano-Santana sleeping in her bed. When C.R. told him that she was going to call the police, Serrano-Santana took her phone away, and

the two “struggled.” C.R. testified that she was eventually able to call the police, and when they arrived, Serrano-Santana was “grabbing [her] by the neck.” The state then introduced two photographs of C.R. from the May 15 incident, which showed bruising on C.R.’s cheek and beneath her shoulder.

C.R. testified that, after she ended their relationship, she moved to get away from Serrano-Santana because he repeatedly entered her residence without her permission. According to C.R., Serrano-Santana came to her residence on August 27, 2019, and attempted to convince her to get back together with him. C.R. claimed that, during that encounter, Serrano-Santana grabbed her by the neck.

The next day, C.R. arrived home from work at about 5:00 p.m. When she arrived home, C.R.’s daughter was asleep in the apartment, and C.R. discovered that the front door was unlocked. And when C.R. entered the apartment, Serrano-Santana was coming out. C.R. testified that she asked Serrano-Santana what he was doing there, and he told her that he “was just there to see what he would find” and showed her that he had taken her bankcard. C.R. testified that she told Serrano-Santana that she was going to call the police and he then grabbed her by the neck “like he always does.” C.R. claimed that Serrano-Santana put her against the wall, covered her mouth, and squeezed her neck. C.R. explained that, although she was able to breathe through her mouth, she was afraid and thought Serrano-Santana was going to kill her. According to C.R., Serrano-Santana then left with her bankcard.

C.R. called 911. An officer responded to the call and described C.R. as “very distraught, very confused, [and] very scared.” C.R. informed the officers that her ex-

boyfriend got inside her apartment, grabbed her by the neck, and showed her that he had taken her bankcard. C.R. also told the officers that her neck was sore and that she could not swallow. Although one of the officers testified that C.R. was embarrassed because she had lost control of her bladder when Serrano-Santana grabbed her neck, C.R. testified that she did not remember the officers asking her about that.

Officers observed a fresh scratch on C.R.'s neck, just below her chin. Officers also observed that one of the screens on a window to C.R.'s ground-floor apartment had been cut and that a window on another side of the apartment would allow entrance into the apartment. Photographs of the windows and of C.R.'s neck were taken by the officers and admitted into evidence.

Officers searched the area for Serrano-Santana, but they were unable to locate him. Later that evening, Serrano-Santana repeatedly called and texted C.R., both threatening her and trying to reconcile their romantic relationship. Serrano-Santana continued communicating with C.R. the next day and eventually came to C.R.'s apartment, where he was arrested.

C.R. gave a statement to Sergeant Michelle Giampolo on August 30, 2019. C.R. described the pressure that resulted when Serrano-Santana squeezed her neck on August 28 as a six out of ten. C.R. also told Sergeant Giampolo that "as a result of being strangled" by Serrano-Santana on August 28, she "urinated on herself," "saw stars," and that "her vision started to go black." According to Sergeant Giampolo, bladder control is a symptom of being strangled. Sergeant Giampolo testified that C.R. said that as a result of being

strangled by Serrano-Santana, her “voice was raspy and sore and it hurt when she swallowed.”

The jury found Serrano-Santana guilty as charged. The district court entered judgments of conviction for first-degree burglary, threats of violence, and domestic assault by strangulation and sentenced him to serve 60 months in prison for those crimes. Serrano-Santana appeals.

DECISION

I.

Serrano-Santana contends that the district court abused its discretion by admitting, under Minn. Stat. § 634.20 (2020), evidence regarding his relationship with C.R. and that the court plainly erred by failing to instruct the jury, sua sponte, regarding the proper use of that evidence. We address each argument in turn.

Admission of Relationship Evidence

Minn. Stat. § 634.20 is a rule of evidence that allows the admission of “relationship” evidence in certain circumstances. *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015). The statute provides that “[e]vidence 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. “Domestic conduct” includes, among other things, “evidence of domestic abuse.” *Id.* “Domestic abuse” includes “physical harm, bodily injury, or assault,” if committed against a family or household member. Minn. Stat. § 518B.01, subd. 2(a)(1) (2020); *see also* Minn. Stat. § 634.20 (incorporating that definition of domestic abuse).

We review the district court’s decision to admit evidence under Minn. Stat. § 634.20 for an abuse of discretion. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), review denied (Minn. Oct. 29, 2008). The appellant has the burden to establish that the district court abused its discretion and that appellant was prejudiced. *Id.*

Prior to trial, the state filed notice of intent to introduce relationship evidence under Minn. Stat. § 634.20. Later, the state moved in limine to introduce evidence regarding three prior domestic-related incidents involving Serrano-Santana and C.R. The district court, over Serrano-Santana’s objection, granted the state’s request to admit evidence regarding incidents that had occurred in February and May 2019, but the court ruled that evidence regarding the third incident would not be allowed. Ultimately, the state did not present evidence regarding the February 2019 incident at trial.

Serrano-Santana argues that evidence regarding the May 15, 2019 incident had limited probative value and was outweighed by its prejudicial effect “because it made [him] appear to have a propensity for violence towards [C.R.]” Serrano-Santana cites *State v. Hormann* as support, a case in which the defendant was charged with stalking and installing a tracking device on his wife’s car without permission. 805 N.W.2d 883, 886 (Minn. App. 2011), review denied (Minn. Jan. 17, 2012). At trial, the *Hormann* complainant testified about the defendant’s conduct during their 20-year marriage, which consisted of domestic violence and controlling and destructive behavior. *Id.* at 886-87. On appeal, this court stated that the complainant’s “general testimony about the marriage was only marginally relevant to establish why she believed her car was being tracked” by the defendant and “had little apparent value other than to establish [the defendant’s] bad character.” *Id.* at

891. This court concluded that the “limited probative value of the evidence was outweighed by the danger of prejudice and the district court abused its discretion by admitting it.” *Id.*

Serrano-Santana’s reliance on *Hormann* is unavailing because, unlike the defendant in *Hormann*, Serrano-Santana was charged with domestic-assault-related offenses. And in this case, the relationship evidence helped the jury to assess C.R.’s credibility. As Serrano-Santana notes in his brief to this court, “[t]his case hinged on [C.R.’s] credibility.” Relationship evidence has “significant probative value in assisting the jury to judge witness credibility.” *Lindsey*, 755 N.W.2d at 757.

Moreover, “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. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (quotation omitted). We acknowledge that the relationship evidence was prejudicial to Serrano-Santana. But Serrano-Santana fails to establish that the evidence persuaded by illegitimate means or gave the state an unfair advantage. And although the district court failed to provide a limiting instruction, the prosecutor mitigated the risk of unfair prejudice by telling the jury that “[y]ou are not to convict [Serrano-Santana] based on the[] May, 2019 acts.”

In sum, the probative value of the May 15, 2019 incident was not substantially outweighed by potential for unfair prejudice, and the district court did not abuse its discretion by admitting it.

Cautionary Jury Instruction

In *State v. Zinski*, the supreme court adopted the rule that if “a district court admits relationship evidence under Minn. Stat. § 634.20, over a defendant’s objection that the evidence does not satisfy section 634.20, the court must sua sponte instruct the jurors on the proper use of such evidence, unless the defendant objects to the instruction by the court.” 927 N.W.2d 272, 278 (Minn. 2019).

At trial, Serrano-Santana did not request a cautionary instruction regarding the proper use of the relationship evidence, nor did he object to the district court’s failure to provide such an instruction. “Failure to request specific jury instructions or to object to instructions given generally results in forfeiture of the issue on appeal.” *State v. Goodloe*, 718 N.W.2d 413, 422 (Minn. 2006). But, under the plain-error doctrine, we have discretion to consider a forfeited issue. *Zinski*, 927 N.W.2d at 275. Under that standard, we may consider an unobjected-to error “if the defendant establishes (1) an error, (2) that was plain, and (3) that affected his substantial rights.” *Id.* If those elements are satisfied, we will reverse if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014).

An error is “plain” if it “contravenes caselaw, a rule, or a standard of conduct.” *Zinski*, 927 N.W.2d at 275 (quotations omitted).

The third prong, requiring that the error affect substantial rights, is satisfied if the error was prejudicial and affected the outcome of the case. The defendant bears the burden of persuasion on this third prong. We consider this to be a heavy burden. We have defined plain error as prejudicial if there is a reasonable likelihood that the giving of the

instruction in question would have had a significant effect on the verdict of the jury.

State v. Griller, 583 N.W.2d 736, 741 (Minn. 1998) (footnotes and quotation omitted).

Serrano-Santana argues, and the state agrees, that under *Zinski*, the district court's failure to provide a cautionary instruction regarding the relationship evidence was error and that the error was plain. We agree. Because the district court admitted relationship evidence under Minn. Stat. § 634.20 over Serrano-Santana's objection and he did not object to an instruction regarding the proper use of such evidence, the district court plainly erred by failing to sua sponte provide a cautionary instruction. See *Zinski*, 927 N.W.2d at 278.

Serrano-Santana argues that a "reasonable likelihood existed that the failure to give a cautionary instruction substantially affected the verdict." But Serrano-Santana cites no precedential case in which the failure to provide a cautionary instruction regarding the proper use of evidence admitted under Minn. Stat. § 634.20 affected the defendant's substantial rights. Nor does our research reveal any Minnesota appellate decision, precedential or otherwise, that reversed a defendant's conviction on the basis that there was a reasonable possibility that the lack of a cautionary instruction related to the use of relationship evidence substantially influenced the jury's decision to convict.

In *State v. Meldrum*, this court held that the lack of a cautionary instruction on the proper use of relationship evidence did not prejudice the defendant. 724 N.W.2d 15, 21-22 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007). In reaching that conclusion, we analogized relationship evidence to *Spreigl* evidence and concluded that because the risk presented by both types of evidence to a fair trial is significant, a precautionary limiting

instruction should be given in relationship-evidence cases, as it is in *Spreigl*-evidence cases. *Id.* at 17. But we stated that the lack of a limiting instruction regarding relationship evidence did not prejudice the defendant because other evidence at trial supported the conviction, the relationship evidence was not used for an improper purpose, and the other strong evidence at trial negated the risk of prejudicial impact from the relationship evidence. *Id.* at 22.

This court has since held, in several precedential opinions, that defendants were not prejudiced by the lack of a cautionary instruction regarding the proper use of relationship evidence because the other evidence of guilt was strong. *See State v. Melanson*, 906 N.W.2d 561, 568 (Minn. App. 2018) (stating that “the relationship testimony . . . was brief, its scope was limited, neither party placed undue emphasis on it, and the record contained other strong evidence of [the defendant’s] guilt”), *review granted* (Minn. Mar. 28, 2018) *and appeal dismissed* (Minn. June 5, 2019); *see also State v. Barnslater*, 786 N.W.2d 646, 654 (Minn. App. 2010) (reasoning that the limited nature of the complainant’s testimony minimized the potential for unfair prejudice, the district court’s final jury instructions alleviated much of the risk that the jury would improperly convict the defendant for the prior offenses rather than the charged offense, and the evidence supporting the defendant’s conviction was very strong), *review denied* (Minn. Oct. 27, 2010); *State v. Word*, 755 N.W.2d 776, 785-86 (Minn. App. 2008) (reasoning that the evidence of the defendant’s guilt was strong, the prosecutor did not attempt to use the relationship evidence for an improper purpose, and the district court instructed the jury not to convict the defendant for any prior offenses).

Here, the state presented strong evidence of Serrano-Santana's guilt, in addition to the relationship evidence regarding the May 2019 incident. C.R. testified, without objection, that Serrano-Santana had been violent in the past, and Serrano-Santana does not argue that that testimony was wrongly admitted. C.R. also testified—specifically and consistently—about the August 28, 2019 events that resulted in the underlying charges against Serrano-Santana. She testified that she came home from work to find Serrano-Santana in her home while her daughter was asleep; that he pushed her against a wall; that he put his hands over her mouth; that he squeezed her neck; that he ran away with her bankcard, and that he later threatened her. In addition, evidence was presented that C.R. called 911 to report the incident, and the 911 call in which C.R. informed the dispatcher that Serrano-Santana had broken into her home was admitted into evidence.

The state also presented the testimony of the responding officer, who testified that C.R. “was very distraught, very confused, [and] very scared.” According to the officer, C.R. told him that her ex-boyfriend got inside her apartment, grabbed her by the neck, and showed her that he had taken her bankcard. The officer also testified that C.R. stated that her neck was sore and that she could not swallow. Moreover, the officer testified that he observed a fresh scratch on C.R.'s neck, just below her chin, and two windows from which Serrano-Santana could have gained entry into C.R.'s apartment. Photographs of those windows and of C.R.'s neck were taken and admitted into evidence.

In addition to the strength of the evidence regarding the August 28 incident, there is no indication that the prosecutor used the relationship evidence for an improper purpose. In fact, the prosecutor specifically told the jury not to convict Serrano-Santana “based on

the[] May 2019, acts.” And the district court properly instructed the jury on the presumption of innocence and the requirement of proof beyond a reasonable doubt, as well as the proper elements of the offenses.

In sum, other evidence at trial supported the conviction, the relationship evidence was not used for an improper purpose, and the other strong evidence at trial negated the risk of prejudicial impact from the relationship evidence. Thus, we are not persuaded that the district court’s failure to provide a cautionary instruction regarding proper use of evidence related to the May 2019 incident affected Serrano-Santana’s substantial rights. He therefore is not entitled to relief under the plain-error standard.

II.

Serrano-Santana argues that the evidence was insufficient to sustain his conviction of domestic assault by strangulation. When reviewing the sufficiency of the evidence, we normally conduct “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). A reviewing court “will not disturb the 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 guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

Serrano-Santana was convicted of domestic assault by strangulation under Minn. Stat. § 609.2247, subd. 2 (2018). That statute provides that “whoever assaults a family or

household member by strangulation is guilty of a felony.” Minn. Stat. § 609.2247, subd. 2. “‘Strangulation’ means intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.” *Id.*, subd. 1(c) (2018).

Serrano-Santana argues that because C.R. testified that Serrano-Santana “grabbed her by the throat and cupped his hand over her mouth, but she could still breathe,” his “actions did not impede her normal breathing” within the meaning of section 609.2247, subdivision 1(c). Thus, Serrano-Santana argues that the evidence was insufficient to support his conviction of domestic assault by strangulation and that this court must reverse and remand with instructions to reduce his conviction to gross-misdemeanor domestic assault.

Serrano-Santana’s sufficiency-of-the-evidence argument requires us to determine the meaning of “impeding normal breathing or circulation of the blood,” which raises an issue of statutory interpretation. *See State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017) (deciding a statutory-interpretation question in order to analyze the sufficiency of the evidence). Statutory interpretation is a question of law that is reviewed de novo. *See State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018).

This court “interpret[s] statutory language to ascertain and effectuate the Legislature’s intent.” *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019) (quotation omitted). “If the Legislature’s intent is clear from the statute’s plain and unambiguous language, then we interpret the statute according to its plain meaning.” *State v. Glover*, 952 N.W.2d 190, 193 (Minn. 2020) (quotation omitted).

The parties dispute the meaning of the term “impede” in Minn. Stat. § 609.2247, subd. 1(c), and that term is not defined in the statute. In such circumstances, we “may look to other interpretive tools to determine its meaning, including dictionary definitions.” *Id.* One dictionary defines “impediment” as “[a] hindrance or obstruction.” *Black’s Law Dictionary* 870 (10th ed. 2014). Another dictionary defines “impede” as “[t]o retard or obstruct the progress of.” *The American Heritage Dictionary of the English Language* 879 (4th ed. 2006).

The dictionary definitions of “impede” do not support Serrano-Santana’s position that a person’s normal breathing must be completely or entirely obstructed to constitute strangulation under Minn. Stat. § 609.2247, subd. 2. Instead, the common dictionary definition of “impede” indicates that a person’s normal course of breathing need only be hindered. Moreover, the strangulation statute requires only that normal breathing be impeded by “applying pressure on the throat or neck *or by blocking the nose or mouth of another person.*” Minn. Stat. § 609.2247, subd. 1(c) (emphasis added). The fact that the statute requires only the blockage of the nose or mouth for a strangulation to occur indicates that a strangulation victim could still be able to breathe even while strangled within the meaning of the statute. *See id.*

C.R. testified that Serrano-Santana grabbed her by the neck, put her against the wall, and squeezed her neck with “his two fingers” for “one minute.” C.R. also testified that her “airway” was “blocked” from her nose because of the way he positioned his hand over her mouth. And C.R. testified that, after the assault, it hurt when she swallowed her saliva or drank water. Although C.R. stated that she could still breathe through her mouth as she

was strangled by Serrano-Santana, the statute does not require that she was completely unable to breathe. Instead, the statute requires only that her normal breathing was impeded by the application of pressure to her neck or the blockage of her nose or mouth. *See id.*

Moreover, Sergeant Giampolo testified that C.R. told her that “as a result of being strangled [C.R.] urinated on herself and she saw stars and her vision started to go black.” Sergeant Giampolo’s testimony further supports the jury’s determination that C.R.’s normal breathing was impeded by Serrano-Santana’s actions. Although C.R. testified that she did not urinate on herself during the assault, this court views the evidence in the light most favorable to the verdict. *See Ortega*, 813 N.W.2d at 100.

C.R.’s testimony, in conjunction with Sergeant Giampolo’s testimony, supports the jury’s determination that C.R. was strangled by Serrano-Santana. Accordingly, the evidence is sufficient to support Serrano-Santana’s conviction of domestic assault by strangulation.

Affirmed.