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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0127**

State of Minnesota,
Respondent,

vs.

Noah Steven Sovde,
Appellant.

**Filed December 20, 2021
Affirmed
Cochran, Judge**

Beltrami County District Court
File No. 04-CR-20-251

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

David Hanson, Beltrami County Attorney, Ashley A. Nelson, Assistant County Attorney,
Bemidji, Minnesota (for respondent)

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

Considered and decided by Worke, 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NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal, appellant challenges his convictions of violation of an order for protection and threats of violence. Appellant seeks reversal of his convictions and a new trial, arguing that the district court abused its discretion by admitting relationship evidence under Minn. Stat. § 634.20 (2020). Because the district court did not abuse its discretion by admitting the evidence, we affirm.

FACTS

By an amended complaint, respondent State of Minnesota charged appellant Noah Steven Sovde with one count of felony violation of an order for protection under Minn. Stat. § 518B.01, subd. 14(d)(1) (2018), and two counts of threats of violence under Minn. Stat. § 609.713, subd. 1 (2018). The amended complaint alleged that on January 23, 2020, an officer received a report of a violation of an order for protection. At the time, there was an active order for protection prohibiting Sovde from contacting B.A., a woman with whom he has a child. The complaint alleged that Sovde told a third party, C.S., to relay a threat of violence to B.A. The complaint further alleged that C.S. relayed Sovde's message to B.A. and that the message caused B.A. to become fearful. The amended complaint charged Sovde with two counts of threats of violence on the basis that both C.S. and B.A. were victims of Sovde's threatening statement.

In anticipation of trial, the state filed a notice indicating that it intended to offer evidence of prior domestic conduct by Sovde against B.A., or “relationship evidence,” pursuant to Minn. Stat. § 634.20. In the notice, the state specified that the relationship evidence would show that Sovde had previously committed felony domestic assault against B.A. “by breaking into her home, grabbing her by the neck while covering her mouth and nose, and preventing her from breathing.” The state further intended to offer evidence that Sovde “was convicted for [that] offense.” In response, Sovde filed a motion in limine arguing that the evidence was inadmissible because “notice and disclosure was not timely provided, the evidence is not being offered for a permissible purpose, the evidence is substantially more prejudicial than probative, and permitting the evidence would violate Mr. Sovde’s right to a speedy trial.” At a contested omnibus hearing in September 2020, Sovde’s counsel again argued that the evidence was unfairly prejudicial and had “little to no” probative value. After taking the matter under advisement, the district court issued a written order in which it ruled that the state’s proffered evidence was admissible as relationship evidence.

The case proceeded to a jury trial. Both C.S. and B.A. testified for the state. C.S. testified that Sovde is her half-brother and that, on January 23, 2020, she was at a gas station and saw Sovde’s truck. She had not seen Sovde “in a while” so she pulled her car next to Sovde’s truck, rolled down her window, and the two began to talk. During the conversation, Sovde noticed that C.S. had a car seat in her vehicle. Sovde asked C.S. if she had a child. C.S. responded “no” and told Sovde that the car seat was for Sovde’s daughter. C.S. testified that Sovde “appeared to get very angry” and asked if C.S. had been

in contact with B.A. and his daughter. C.S. responded that she had been. C.S. also told Sovde that she makes an effort to see B.A. “regularly.” According to C.S., Sovde then instructed C.S. “to tell [B.A.] that he is going to find her, kill her and her whole family and take his child back.” C.S. testified that Sovde used a “serious” tone when he communicated this threat. According to C.S., she texted B.A. right away to tell her what had happened because she had concerns for B.A.’s safety. B.A. then called C.S. crying and asked her to meet at the police station. C.S. testified that she proceeded to the police station where she met B.A., who was shaking and “seemed terrified.” While at the police station, C.S. made a police report concerning her interactions with Sovde at the gas station.

B.A. testified at trial that she previously dated Sovde for approximately two years and that Sovde is the father of her child. According to B.A., in January 2020, she had an active order for protection against Sovde that prohibited him from having any contact with her. B.A. testified that C.S. texted her in late January 2020 with a message from Sovde. The message was that Sovde was “gonna kill [B.A.] and [her] whole family and kidnap his kid back.” B.A. stated that, after receiving the message, she felt “terrified and did not feel safe at all.” She further testified that she could “see him, actually, trying to do something like that.”

The state then questioned B.A. about a prior incident involving Sovde. B.A. testified as follows. In March 2019, Sovde sent a text message to her, telling her that he was going to come over to her house. B.A. responded to his text message, “no, you’re not,” and Sovde answered, “yes, I am.” Later that day, Sovde arrived at B.A.’s house, knocked on the locked door, and then let himself into the house. Sovde then came into

B.A.'s bedroom. B.A. told him to leave, but Sovde said, "[W]ell, I'm here[,] I might as well just stay." Sovde then "tried to grab" their daughter and "tried to hold her." B.A. repeatedly "pushed his hand away" and told him not to grab the child. Sovde then "ended up pulling [B.A.'s] hair" and "putting his hands around [B.A.'s] neck." Sovde also threw a lamp across the room, shattering the lightbulb. Sovde "put his hand over [B.A.'s] mouth and [her] nose" and "pushed [her] where [she] was laying on [her] bed." B.A. "almost couldn't breathe and felt like [she] was going to pass out." After B.A. began crying, Sovde left the house. B.A. testified that the March 2019 incident made her take Sovde's January 2020 message more seriously because she felt like "he would have done it again . . . put his hands on me or anybody; like my family."

Following B.A.'s testimony about the March 2019 incident, the district court provided a cautionary instruction concerning the admission of the relationship evidence. The cautionary instruction directed the jury that the evidence of Sovde's March 2019 conduct was introduced for the limited purpose of demonstrating the nature and extent of his relationship with B.A. The district court emphasized that the jury was not to convict Sovde on the basis of his March 2019 conduct. The state then offered a certified copy of Sovde's convictions arising from the March 2019 incident as an exhibit. There was no objection, and the exhibit was received. The exhibit showed that Sovde had been convicted of second-degree burglary and felony domestic assault. The district court permitted the jury to view the exhibit during its deliberations.

Sovde testified in his own defense. He denied making any threats against B.A., her family, or his daughter. And he denied telling C.S. to relay any message from him to B.A.

The jury also heard testimony from a friend of Sovde's who was in Sovde's truck at the time Sovde spoke with C.S. on January 23, 2020. Sovde's friend testified that he did not hear Sovde make any threats or ask C.S. to communicate a message to B.A. Finally, the jury heard testimony from the police officer who took a statement from Sovde following the incident. The officer testified that Sovde did not admit to making any threatening statements.

The jury found Sovde guilty of violating an order for protection and of making threats of violence against B.A.¹ This appeal follows.

DECISION

Sovde argues that he is entitled to a new trial because the district court abused its discretion by admitting, as relationship evidence under Minn. Stat. § 634.20, B.A.'s testimony that Sovde broke into her home and assaulted her in March 2019, as well as Sovde's subsequent convictions arising out of this conduct.

Evidence falling within the scope of Minn. Stat. § 634.20 is commonly referred to as relationship evidence. *See State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006) (noting that "evidence admitted under section 634.20 is a subtype of general relationship evidence"). Section 634.20 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

¹ During trial, the district court granted Sovde's motion for judgment of acquittal on the other count of threats of violence, which alleged C.S. as a victim. The district court granted the motion on the basis that there was no evidence that Sovde had threatened C.S.

prejudice.” Minn. Stat. § 634.20 (emphasis added). “‘Domestic conduct’ includes, but is not limited to, evidence of domestic abuse.” *Id.* “[T]he rationale for admitting relationship evidence under section 634.20 is to illuminate the relationship between the defendant and the alleged victim and to put the alleged crime in the context of that relationship.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010). “We review the 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). To be entitled to a new trial, “an appellant must demonstrate that the district court erred by admitting the evidence and that the erroneously admitted evidence substantially influenced the jury’s decision.” *Id.*

Sovde challenges the admission of his prior convictions and the testimony concerning his March 2019 conduct as relationship evidence on two bases. His first argument is limited to the admission of evidence related to his prior burglary conviction for breaking into B.A.’s home in March 2019. He contends that the district court erred when it admitted this evidence as relationship evidence under section 634.20 because the burglary-related evidence is not evidence of “domestic conduct” within the meaning of section 634.20. Second, Sovde challenges the admission of all of B.A.’s testimony concerning his March 2019 conduct and his related convictions on the basis that the evidence was unfairly prejudicial. We address each argument in turn.

I. Sovde forfeited his argument that the evidence related to his burglary conviction for breaking into B.A.’s home is not evidence of “domestic conduct” under section 634.20.

Sovde contends that the district court abused its discretion by admitting evidence of his prior burglary conviction and B.A.’s testimony that he broke into her home in March 2019 under section 634.20 because that evidence is not evidence of “domestic conduct” within the meaning of the statute. Sovde does not appear to challenge the admission of his prior domestic-assault conviction or the portion of B.A.’s testimony concerning his assaultive conduct in March 2019 on this same basis. Rather, this argument pertains only to the evidence of his burglary conviction and the specific testimony that he previously broke into B.A.’s home. The state, in turn, argues that Sovde cannot now challenge the admission of that evidence on the ground that burglary is not “domestic conduct” because Sovde failed to object to the evidence on that ground to the district court.

“Appellate review of an evidentiary issue is forfeited when a defendant fails to object to the admission of evidence.” *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). “A defendant’s objection to the admission of evidence preserves review only for the stated basis for the objection or a basis apparent from the context of the objection.” *Id.* However, even if a party forfeits an evidentiary issue, we will ordinarily review that issue for plain error. *Id.* at 650.

In his motion in limine and at a hearing concerning that motion, Sovde provided the following grounds for his objection to the state’s proposed relationship evidence: the state failed to provide timely notice and disclosure of the evidence; the evidence was not offered for a permissible purpose; the evidence is substantially more prejudicial than

probative; and admitting the evidence would violate Sovde's right to a speedy trial. Sovde did not argue that the evidence was inadmissible because burglary is not "domestic conduct" under section 634.20, and this basis for challenging the admission of the evidence is not apparent from the context of Sovde's objection to the district court.

Because he failed to raise the issue to the district court, we conclude that Sovde forfeited this particular ground for challenging the admission of his prior burglary conviction and B.A.'s testimony that he broke into her home. We still, however, review this forfeited issue for plain error. *Id.* Plain error exists where there is (1) an error, (2) that is plain, and (3) that affects the defendant's substantial rights. *Thoresen v. State*, 965 N.W.2d 295, 308 (Minn. 2021). "An error is plain when it is clear and obvious." *Id.* Our review confirms that the district court did not plainly err by admitting that evidence.

Section 634.20 provides that "'[d]omestic conduct' includes, *but is not limited to*, evidence of domestic abuse." Minn. Stat. § 634.20 (emphasis added). This definition is broad enough to include burglary where the burglary was related to an assault against a person covered under the statute. *Cf.* Minn. Stat. § 518B.01, subd. 2(a)(1), (b)(5) (2018) (providing that "[d]omestic abuse" encompasses assault on a person with whom the defendant shares a child). The conduct underlying Sovde's burglary conviction was related to an assault against a person covered by the statute, namely B.A., because it involved a continuous event in which Sovde broke into B.A.'s home and assaulted her. Accordingly, we discern no plain error in the district court's conclusion that the evidence related to Sovde's burglary conviction is "domestic conduct" within the meaning of section 634.20. We therefore conclude that Sovde is not entitled to relief on this ground.

II. The district court did not abuse its discretion by admitting evidence of Sovde's March 2019 conduct and the related convictions.

Sovde next argues that the district court abused its discretion by admitting the entirety of B.A.'s testimony concerning his March 2019 conduct and evidence of his convictions arising from that conduct because the evidence, taken as a whole, was unfairly prejudicial. In addition to challenging Sovde's argument on its merits, the state contends that Sovde forfeited his argument concerning the admissibility of his prior convictions because he failed to object to the court document listing his convictions when it was offered as an exhibit at trial. Assuming, without deciding, that Sovde preserved this issue for appeal, we conclude that the district court acted within its discretion when it admitted this evidence under section 634.20.

Evidence of prior domestic conduct is admissible under section 634.20 to shed light on the relationship of the parties so that jurors can put the charged crime in context and better judge the credibility of the principals in the relationship. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). Such evidence "is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice." Minn. Stat. § 634.20.

Sovde contends that the district court abused its discretion when it admitted this evidence because the evidence was minimally probative and had great potential for unfair prejudice. Specifically, he argues that the relationship evidence had low probative value because the evidence was not necessary to put the current offenses—threats of violence and violation of an order for protection—in context. He notes that both C.S. and B.A. testified about the current alleged offenses. He also emphasizes that there was no

interaction between Sovde and B.A. on the date of the alleged offenses and that “[t]he jury heard enough testimony about Sovde and B.A.’s relationship without the evidence of Sovde’s prior bad acts.” On this basis, he contends that the relationship evidence introduced by the state had low probative value. Sovde also argues that the risk of unfair prejudice was high because the evidence “reflected only on his bad character and not on his relationship with B.A.” and therefore “allowed the jury to infer that because he had engaged in violence and assaults on her in the past, he must have also committed the charged crimes or, at the very least, deserved to be punished.” We are not persuaded.

The evidence of Sovde’s March 2019 conduct and related convictions was highly probative because it provided context for the charged offenses and aided the jury in judging the credibility of the witnesses. The evidence illustrated Sovde’s past abusive and threatening behavior toward B.A. by showing that Sovde had previously entered B.A.’s home without her permission and assaulted her. This evidence put the charged offenses—threats of violence and violation of an order for protection—into the context of Sovde and B.A.’s relationship history. In particular, this evidence of Sovde’s prior actions against B.A. helped to explain why Sovde’s statement to C.S. made B.A. fear for her safety. Moreover, as Sovde acknowledges in his brief, the trial turned on the jury’s determination of whether to credit the testimony of B.A. and C.S. or the testimony of Sovde and his friend. The relationship evidence aided the jury in making that determination.

Further, the probative value was not substantially outweighed by the potential for unfair prejudice. “[U]nfair 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.” *Bell*, 719 N.W.2d at 641 (quotation omitted). Here, the district court gave the following cautionary instruction regarding the relationship evidence:

The State has just introduced evidence of conduct by the Defendant on March 4, 2019. *This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship* between the Defendant and [B.A.]. *In order to assist you in determining* whether the Defendant committed those acts with which the Defendant is charged in the complaint [sic]. The Defendant is not being tried for and may not be convicted of any behavior other than the charged offenses. *You are not to convict the Defendant on the basis of conduct on March 4, 2019.* To do so might result in unjust, double punishment.

(Emphasis added.) “A district court’s limiting instruction lessens the probability of undue weight being given by the jury to the evidence.” *State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (quotation omitted).

Sovde argues that the contents of the district court’s instruction did not mitigate the risk of unfair prejudice because “[t]he court told the jury the evidence was to be used to *determine* whether Sovde committed those acts with which he was charged.” (Emphasis added.) But this argument misstates the district court’s instruction. As the quoted passage above indicates, the district court did not instruct the jury that the relationship evidence “was to be used to *determine* whether Sovde committed” the crimes; rather the district court told the jury that the evidence could “*assist*” the jury in determining whether Sovde committed the acts with which Sovde was charged. (Emphasis added.) To “assist” is different than to “determine.” The term “assist” means “[t]o give help or support to,” whereas the term “determine” means “[t]o decide or settle . . . conclusively and

authoritatively.” *The American Heritage Dictionary of the English Language* 108, 494 (5th ed. 2018). And, as noted above, the court’s instruction also advised the jury that the relationship evidence was “offered for the limited purpose of demonstrating the nature and extent of the relationship between the [d]efendant and [B.A.]” and cautioned the jury not to convict Sovde based on his prior conduct. This court “presume[s] that jurors follow the court’s instructions.” *Zornes v. State*, 880 N.W.2d 363, 373 (Minn. 2016).

Lastly, Sovde contends that the district court’s instruction was insufficient because it was provided after B.A.’s testimony, rather than before, and was not repeated in the court’s final instructions to the jury. While Sovde is correct that the district court provided the cautionary instruction after B.A.’s testimony regarding Sovde’s March 2019 conduct, the instruction closely followed B.A.’s testimony in that regard. And the instruction was provided right before the district court admitted the exhibit showing Sovde’s convictions of domestic assault and burglary arising out of the March 2019 conduct. Given that the instruction was close in time to the evidence related to Sovde’s March 2019 conduct, we conclude that the district court’s cautionary instruction sufficiently mitigated the risk of any unfair prejudice.

In sum, the relationship evidence relating to Sovde’s 2019 conduct assisted the jury in putting the charged offenses into context and in judging the credibility of the witnesses, and the district court’s instruction to the jury reduced the risk of any unfair prejudice. The district court therefore acted within its discretion by concluding that the probative value of

the evidence was not substantially outweighed by the risk of unfair prejudice and properly admitted the relationship evidence.²

Affirmed.

² Sovde also appears to suggest that the district court erred by not expressly analyzing, in its order, whether the probative value of the relationship evidence was substantially outweighed by the danger of unfair prejudice. To the extent that he is challenging the admission of the relationship evidence on that basis, his argument fails because district courts are not required to expressly make such findings on the record. *Bell*, 719 N.W.2d at 640-41.