

*This opinion is nonprecedential except as provided by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
A21-1626**

State of Minnesota,
Respondent,

vs.

Joseph Ndichu Kinyanjui,
Appellant.

**Filed September 6, 2022
Affirmed
Bjorkman, Judge**

Olmsted County District Court
File No. 55-CR-19-3278

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Slieter, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction for attempted murder of his wife, arguing that the district court (1) abused its discretion by admitting relationship evidence and (2) plainly

erred by giving the jury a no-adverse-inference instruction without his permission. Because we discern no abuse of discretion and the jury instruction did not affect appellant's substantial rights, we affirm.

FACTS

Appellant Joseph Ndichu Kinyanjui was arrested after severely beating his wife with a hammer. Respondent State of Minnesota charged him with several crimes, including domestic assault and attempted first-degree premeditated murder.

At trial, Kinyanjui's wife and two of his adult children, P.N. and M.N., testified about his prior abusive conduct. Wife testified that Kinyanjui beat her with a belt and was verbally abusive during their marriage. In 2019, Kinyanjui lived with wife, P.N., P.N.'s four-year-old daughter P., and T.N., his adult son. Wife moved out of their shared bedroom in February, but he continued to physically abuse her. P.N. testified that she had "grown up in an abusive family," heard Kinyanjui verbally abuse and threaten to kill wife, and that wife moved out of the shared bedroom to get away from Kinyanjui's continued abuse. M.N. testified that she saw Kinyanjui physically abuse wife many times and heard him threaten to kill her. The district court instructed the jury that this evidence was admitted "for the limited purpose of demonstrating the nature and extent of the relationship" between Kinyanjui and his family and household members, and the jury was "not to convict the defendant on the basis of" that conduct.

On the evening of May 8, wife was at home with Kinyanjui, P.N., and P. Wife testified that she "could see [Kinyanjui] had some anger in him," so she took her dinner to her bedroom and sat down to eat. She then thought she saw something at the bedroom

door, looked up and saw someone with a hammer, and felt a blow to her head. Wife could not remember what happened next until several days later. P.N. testified that she was folding laundry when wife took her dinner into her bedroom and heard wife say that Kinyanjui was following her. P.N. heard the bedroom door shut and lock and then heard wife scream. P.N. picked up P. from the hallway outside the bedroom, ran outside, and called 911.

The responding police officers entered the house, proceeded upstairs, stopped outside the closed bedroom door, and heard thuds from inside the room. The officers ordered Kinyanjui to open the door; he responded, “No,” and “I have not finished my work.” One of the officers kicked the door, breaking a hole in the bottom panel. Through the hole, the officer saw wife on the ground with blood on her face and Kinyanjui standing nearby holding a hammer. The officer discharged his taser through the hole at Kinyanjui, and the officers pushed open the door. They saw wife lying unconscious on the floor directly in front of them with severe injuries.¹ There was blood all over the room and several of wife’s teeth were on the floor. Kinyanjui was in the corner opposite the door and refused the officers’ commands to turn around and put his hands behind his back. Kinyanjui said, “Don’t spark me. Put a bullet in me. I die facing you. I haven’t finished my work.” The officers eventually subdued Kinyanjui and arrested him. An officer later found a bloody hammer on the floor between the bed and the wall.

¹ At the hospital, medical staff diagnosed wife with head injuries consistent with hammer blows, including a potentially life-threatening depressed skull fracture. She also had a subdural hematoma on her brain, defensive wounds on her hands, another skull fracture, a broken cheekbone, broken ribs, a broken arm, two spinal fractures, and a liver injury.

T.N. testified that, after the assault, he found a letter to him from Kinyanjui that discussed property Kinyanjui owned in Kenya and authorized T.N. to have control of Kinyanjui's local bank account. The letter also stated, "That is my will."

After the state rested, and after extended discussions with his counsel and the district court, Kinyanjui waived his right to testify. The district court gave a no-adverse-inference instruction as part of its final jury instructions without obtaining Kinyanjui's express consent to do so.² Kinyanjui did not object to the instruction.

The jury returned guilty verdicts on all charges and found that Kinyanjui committed the crimes in the presence of a child, an aggravating sentencing factor. The district court imposed an upward sentencing departure of 240 months in prison. Kinyanjui appeals.

DECISION

I. The district court did not abuse its discretion by admitting the relationship evidence.

Generally, evidence of a person's bad acts unrelated to the crime for which a person is on trial is prohibited. *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). But there is an exception for what is commonly referred to as "relationship evidence." *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). Relationship evidence is "[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members." Minn. Stat. § 634.20 (2020). Such evidence is presumptively admissible; it is only excluded if its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the

² Defense counsel requested the instruction on Kinyanjui's behalf.

jury, or considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *Id.*; see *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015) (adopting the statute as a rule of evidence). Generally, “evidence of similar conduct in domestic abuse trials is relevant and admissible unless it should be excluded for the reasons listed.” *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004).

We review the admission of relationship evidence for an abuse of discretion. *Id.* at 161. “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.” *Bobo v. State*, 969 N.W.2d 829, 836 (Minn. 2022) (quotation omitted). Kinyanjui asserts that the district court abused its discretion by admitting relationship evidence because its minimal probative value was substantially outweighed by the danger of unfair prejudice. We disagree.

First, the relationship evidence was highly probative of disputed trial issues, including whether Kinyanjui’s conduct was intentional and premeditated. Evidence of a strained marital relationship is relevant to establish motive, intent, and premeditation. *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009). “While proof of a motive is not a necessary element of premeditated murder, presence of a motive strengthens a finding that defendant deliberated over his actions and weakens the argument that the killing was spontaneous.” *State v. Moore*, 481 N.W.2d 355, 362 (Minn. 1992).

The relationship evidence included testimony about Kinyanjui’s repeated threats to harm wife; his physical abuse of wife, P.N., and M.N.; and his anger after being confronted about his actions. This evidence was the most probative evidence of Kinyanjui’s relationship with wife and his motive. And when taken alongside his statements to the

responding police officers before his arrest and the purported will he gave to T.N., the relationship evidence strengthens the inference that Kinyanjui deliberated over his actions and weakens any argument that his attempt to kill his wife was spontaneous.

Second, admission of the relationship evidence was not unfairly prejudicial. “All evidence offered against defendants in criminal trials is prejudicial to some extent” *State v. Spaeth*, 552 N.W.2d 187, 195 (Minn. 1996). In the context of relationship evidence under Minn. Stat. § 634.20, “[w]hen balancing the probative value against the potential prejudice, 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. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted).

As noted above, the relationship evidence was presented by wife and other family members and concerned prior physical abuse and threats Kinyanjui made against them. This evidence is a textbook example of the evidence section 634.20 makes presumptively admissible. *McCoy*, 682 N.W.2d at 159. While admission of the evidence did not benefit his defense, it did not take Kinyanjui by surprise or give the state an unfair advantage. The state asserts that it would be difficult to conclude any prejudice was unfair where the details of Kinyanjui’s prior bad conduct pale in comparison to the details of the charged offenses. We agree. The state’s case-in-chief included lengthy testimony from multiple witnesses about his assault on wife and its aftermath. Photographs and body-camera video recordings depict the final moments of Kinyanjui’s attack and document wife’s gruesome, life-threatening injuries. The nature of this evidence undercuts Kinyanjui’s assertion that the

relationship evidence “unfairly altered the logical decision-making process the jury was supposed to use.” Moreover, the district court properly instructed the jury on the limited role of relationship evidence. *See State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (stating that a district court’s limiting instruction mitigates the risk that a jury may give undue weight to relationship evidence). We presume the jury followed this instruction. *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005).

On this record, we are not persuaded that the district court abused its discretion by admitting the relationship evidence or that its admission was unfairly prejudicial.

II. The district court’s failure to obtain Kinyanjui’s consent before giving the no-adverse-inference instruction did not affect his substantial rights.

If a defendant chooses not to testify, the district court may instruct the jury that it is not to draw an adverse inference from that decision. *State v. Gomez*, 721 N.W.2d 871, 880 (Minn. 2006). But a district court may only give a no-adverse-inference instruction if the defendant personally asks the court to do so. *Id.*; *State v. Clifton*, 701 N.W.2d 793, 798 (Minn. 2005) (stating that a district court must obtain the defendant’s “personal and clear consent” before giving the instruction). Where—as here—the defendant does not object to the instruction given without their personal consent, we review for plain error. *Gomez*, 721 N.W.2d at 881. Plain-error analysis requires a showing of (1) an error, (2) that is plain, and (3) that affects the defendant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error affects a defendant’s substantial rights “if the error was prejudicial and affected the outcome of the case.” *Id.* at 741.

Kinyanjui argues that the instruction prejudiced him because, when coupled with the prosecutor's statement in closing argument that "we can't read the defendant's mind," it could have "caused the jury to wonder why he did not explain his state of mind." This argument is unavailing for two reasons.

First, the no-adverse-inference instruction expressly directs the jury to do the opposite—not to consider why Kinyanjui decided not to testify. We presume that the jury followed the instruction. *Pendleton*, 706 N.W.2d at 509.

Second, the record includes extensive evidence unrelated to Kinyanjui's decision not to testify that supports the jury's verdict. Our supreme court considered similar circumstances in *Gomez*, concluding the district court's error in giving a no-adverse-inference instruction without obtaining Gomez's personal consent did not significantly affect the jury's verdict. 721 N.W.2d at 882. Gomez contended the error was plain and affected his substantial rights because it was a "close factual case" and the combination of the instruction and admission of prior bad-acts evidence "had to have some impact on the verdicts rendered by the jury." *Id.* at 880. In rejecting this contention, the supreme court noted the extensive circumstantial evidence tying Gomez to the murders, including "a partial DNA profile, fingerprint identification, handwriting analysis, wiretapped conversation, similar crimes committed by Gomez, and testimony of other witnesses." *Id.* at 881. Based on the totality of the evidence, the supreme court held that Gomez "failed to meet his heavy burden of showing that there is a reasonable likelihood that the giving of the instruction would have had a significant effect on the jury's verdict." *Id.* at 881-82 (quotation omitted).

As in *Gomez*, ample evidence supports the jury’s guilty verdict here. Wife testified that Kinyanjui followed her into her bedroom and hit her with a hammer. A police officer found the bloody hammer in the bedroom. Immediately before the attack, P.N. heard wife say that Kinyanjui was following her into the bedroom; P.N. then heard wife scream. Minutes later, responding officers heard thuds from inside the bedroom. The only people in the bedroom were Kinyanjui and wife, who was severely injured and unconscious when the officers entered the room. Kinyanjui told the officers that he had “not finished [his] work” and asked them to “put a bullet in [him].” And he left a handwritten will for his son. Given the totality of the evidence, we are not persuaded that the jury would have reached a different verdict if the district court had not given the no-adverse-inference instruction. Kinyanjui has not met his heavy burden of showing the error was prejudicial.³

Affirmed.

³ Kinyanjui also filed a pro se supplemental brief in which he recounts his version of various events and complains of some interactions with his attorney. He asserts no discernible claim of error and offers neither legal argument nor supporting authority. Accordingly, we decline to consider his pro se supplemental brief. *See State v. Reek*, 942 N.W.2d 148, 165 (Minn. 2020) (“We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.” (quotation omitted)).