

*This opinion is nonprecedential except as provided by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
A22-0618**

State of Minnesota,
Respondent,

vs.

Walter James Abrams,
Appellant.

**Filed April 10, 2023
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-CR-20-20306

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

Mary F. Moriarty, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Two family members of appellant Walter James Abrams came forward and reported
allegations of sexual assault by Abrams for instances when they were children. Having

been convicted of first-degree and second-degree criminal sexual conduct, Abrams appeals on the grounds that the district court erred when it allowed testimony from Abrams's supervised-release agent regarding prejudicial pornographic search terms found on Abrams's cellphone and testimony by Abrams's biological niece regarding a prior instance of sexual assault by Abrams when she was a child. Because the district court's admission of the pornographic-search-term evidence and biological niece's relationship evidence did not significantly affect the verdict, we affirm.

FACTS

In September 2020, respondent State of Minnesota charged Abrams with first-degree criminal sexual conduct¹ and second-degree criminal sexual conduct.² The first-degree criminal-sexual-conduct charge stemmed from allegations that Abrams sexually assaulted his daughter on 15 separate occasions between 2012 and 2017, when daughter was between the ages of six and ten years of age. The second-degree criminal-sexual-conduct charge stemmed from allegations that Abrams sexually assaulted his sister's stepdaughter (niece) between 2006 and 2007, when she was between the ages of 11 and 12 years of age. Abrams pleaded not guilty.

In late October 2021, the matter proceeded to trial. Daughter, niece, Abrams, Abrams's sister, another daughter of Abrams, Abrams's sister's biological daughter (biological niece), and Abrams's supervised-release agent testified at trial. The following

¹ In violation of Minnesota Statutes section 609.342, subdivision 1(a) (2020).

² In violation of Minnesota Statutes section 609.343, subdivision 1(h)(iii) (2020).

is a summary of daughter's, niece's, biological-niece's, and the supervised-release-agent's testimonies.

Daughter

In March 2020, when she was 13 years old, daughter's grades were slipping, and she was not acting like herself according to her mother and grandmother. Daughter testified that she knew Abrams was going to be released from prison and she started feeling anxious because it brought up memories of Abrams sexually assaulting her when she was a child. She became scared he would do it again once he was released. She decided to confide in her maternal grandmother. Her grandmother then told daughter's mother, and mother reported the allegations of sexual assault to the police. Daughter was interviewed by a children's advocacy center, and a recording of this interview was played at trial.

Daughter reported to the center approximately 15 different instances of Abrams's molestation between the years 2012 and 2017. Daughter claimed she was between the ages of six and ten during those instances, because Abrams went to prison when she was ten and she had not seen him since then. In each instance, daughter was usually asleep when Abrams would undress her, touch her vagina with his hands and his penis, and sometimes lick and bite her ears. According to daughter, Abrams told her that "it will be [their] little secret." In one specific instance, daughter explained that Abrams had tied her and her sister up when they were naked. And Abrams's biological niece had walked into the room while this was happening because daughter had been screaming. In response, Abrams allegedly

threatened his biological niece with a gun or a knife.³ Daughter said that she tried to tell her paternal grandmother about what Abrams was doing to her when she was six years old, but her paternal grandmother did not believe her and told her to go back to sleep.

Niece

After daughter came forth with her reports against Abrams, daughter's mother reached out to niece because she knew of similar allegations that niece had made when she was a child. Niece decided to call the police and make a report. Niece testified that Abrams molested her when she was between 11 and 12 years old, approximately around 2006 to 2007. Niece explained that Abrams sexually assaulted her when she was sleeping on a pullout couch with biological niece at Abrams's mother's home when Abrams laid behind her, touched her chest, put his hand in her pants, "play[ed]" with her "private area," digitally penetrated her vagina, and pressed his penis against her buttocks. A few weeks after the assault, niece told two of her older sisters, and then told her father, because niece was feeling suicidal. Her father directed niece to confront Abrams in the presence of a group of her family members—which she did—but no one in her family believed her.⁴ Abrams's sister (niece's stepmother) testified that she did not believe niece at the time she came forward with her allegations of molestation by Abrams and that niece and biological niece were both lying at trial as well.

³ Abrams's other daughter, who was allegedly present for this instance of sexual assault as well, testified at trial that this entire incident did not occur.

⁴ Abrams testified that he remembered niece coming forward with this allegation in a group setting with her father, but he denied that accusation.

Niece testified that she eventually left Minnesota to get away from the Abrams family. She said that Abrams's sister tried to bribe her to not testify against Abrams and recant her statement. But Abrams's sister denied that allegation at trial.

Biological Niece

Biological niece also testified that Abrams molested her when she was between the ages of four and eight, but Abrams was not charged for this allegation. She said that she and niece grew up together and were like sisters. Biological niece testified that Abrams sexually assaulted her by touching her nipples and vagina. She said that she also tried to tell her stepfather (niece's father) and her mother (Abrams's sister) after the incident happened, but her mother did not believe her and thought she was lying. Although biological niece testified that the Abrams family treated her poorly, she also said that she does not hate Abrams for what he did to her, she loves him because he is her family. Also, biological niece testified that she did not witness Abrams's daughters tied up in a room together, as daughter testified, but that she remembered being at the home when both girls were sharing a room and Abrams was present.

Supervised-Release Agent

In May 2020, three years after the most recent instance of alleged molestation of his daughter, Abrams's cellphone was searched because Abrams was not complying with his supervised release conditions relating to his release from prison. Abrams's supervised release agent discovered pornographic searches on Abrams's phone from March 2020 to May 2020, which included search terms such as:

- “Daddy and daughter porn”;
- “Daddy f-----g minor daughter”;
- “Scared teen begs stepdaddy to sleep in his bed”;
- “All in the family episode one: daddy punishes stepdaughter for her bad behavior”; and
- “Daddy’s unexpected visit, stepdaughter’s no becomes yes.”

But the supervised release agent acknowledged on cross-examination that Abrams was living with two teenage boys at the time, aged 12 and 14, when the pornographic searches occurred.

At the close of trial, the state and Abrams gave their closing arguments before jury deliberation. The state mentioned the biological niece’s testimony in closing argument three times, reminding the jury that they cannot convict Abrams for these alleged prior acts of sexual assault. Throughout the trial and in his closing argument, Abrams maintained that he was innocent, that the three alleged victims’ testimony was untruthful, and that the women in his life were out to get him, because that is a natural byproduct of having “nine children by five [different] women.” The jury found Abrams guilty of both counts of criminal sexual conduct.⁵

⁵ During deliberations, the jury sent the district court a note that they could not come to an agreement on the second-degree criminal-sexual-conduct charge but that they reached an agreement on the first-degree criminal-sexual-conduct charge. After the district court re-read the jury instruction on unanimous verdicts, the jurors came back with two guilty verdicts one hour and 30 minutes later.

In February 2022, Abrams was sentenced on both counts of criminal sexual conduct. He was sentenced to 158 months for the second-degree conviction and 300 months for the first-degree conviction, to be served concurrently.

Abrams appeals.

DECISION

Abrams asserts that the district court erred on two evidentiary rulings: (1) admitting the supervised release agent’s testimony regarding the pornographic search terms found on his cellphone and (2) admitting, as relationship evidence, the biological niece’s testimony about prior sexual assaults by Abrams when she was a child.

Since both issues on appeal relate to evidentiary rulings, we apply an abuse-of-discretion standard of review because these determinations rest within the sound discretion of the district court, and we will not reverse these decisions absent a clear abuse of the district court’s discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014); *see also State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (stating that a district court’s decision to admit relationship evidence in a domestic-abuse prosecution is reviewed for an abuse of discretion). “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.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

But even if the district court erroneously admitted evidence, the burden still rests on the appellant to establish that the admission of the evidence was not harmless—that there is a reasonable possibility that the jury would have reached a different verdict had the wrongfully admitted evidence not come into trial. *State v. Jaros*, 932 N.W.2d 466, 472

(Minn. 2019). In making that determination, this court considers the strength of the evidence of guilt, how the evidence was presented and whether it was highly persuasive, if the evidence was used in closing argument, and the defense’s ability to counter the evidence. *State v. Hall*, 764 N.W.2d 837, 842 (Minn. 2009); *see also State v. Courtney*, 696 N.W.2d 73, 80 (Minn. 2005) (explaining that the determination of harmless error in wrongfully admitted evidence considers the whole record, including all previously mentioned factors, with no one factor being entirely dispositive).

Turning to the law governing the admission of evidence, rule 401 of the Minnesota Rules of Evidence states that “[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” But relevant evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice. Minn. R. Evid. 403. Finally, when balancing the probative value of the evidence against the potential unfair prejudice against the defendant in trial, unfair prejudice is not merely damaging or severely damaging evidence, it 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).

I. The district court did not abuse its discretion by admitting the pornographic internet searches from Abrams’s cellphone.

Abrams contends that the pornographic searches from his cellphone were admitted in error because they were not relevant and, even if they did have any probative value, the danger of unfair prejudice substantially outweighed that value. Additionally, he argues

that the error was not harmless, and the jury was improperly swayed by this evidence at trial.⁶ The district court allowed the admission of this evidence because it was highly probative, given that one of the alleged victims was Abrams's daughter.

Here, applying the abuse-of-discretion standard of review, the district court did not abuse its discretion in admitting the pornographic search terms through the supervised release agent's testimony because the pornographic search terms were relevant and the prejudice to Abrams did not outweigh their probative value. Minn. R. Evid. 401, 403. The pornographic search terms are relevant because the nature of the searches—relating to father-daughter pornography—shows a sexual proclivity of Abrams that is consistent with the charges against him. *See State v. Bates*, 507 N.W.2d 847, 851-52 (Minn. App. 1993) (holding that evidence that shows a sexual interest in young children was relevant to prove whether an element of criminal sexual conduct was present in alleged contact with child victims), *rev. denied* (Minn. Dec. 27, 1993).⁷

⁶ Abrams asserts that the pornographic search terms were also improperly admitted under the guise of character evidence. *See State v. Blair*, 402 N.W.2d 154, 156 (Minn. App. 1987) (holding character evidence is not admissible when used to show that the person acted in conformity with their character, but it can be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident). This argument fails. The district court appropriately admitted the pornographic search terms because this evidence shows a similar victim demographic, which connects to Abrams's criminal intent and impulse, not character propensity. *Id.*

⁷ Still, Abrams argues that the remoteness in time between the searches in 2020 from daughter's allegations between 2012 and 2017 makes the evidence irrelevant. We disagree. The remoteness in time likely makes the evidence less relevant, but it does not remove all probative value. *See State v. Ness*, 707 N.W.2d 676, 689 (Minn. 2006) (laying out a balancing test for remote prior bad act evidence).

Nor is the probative value of the pornographic cellphone searches outweighed by the danger of unfair prejudice to Abrams. First, the pornographic searches were admitted in a limited capacity through the supervised release agent's testimony. The probation officer only read out the search terms—he did not present any videos or pictures relating to those pornographic searches. Second, watching pornography, and by extension searching for pornographic materials, is not illegal and was less prejudicial to Abrams than a criminal act would have been. Finally, Abrams was able to rebut the credibility of this testimony and implant doubt as to whether he made the searches himself by pointing out that Abrams was living with two teenage boys at the time the searches occurred. In sum, although some prejudice may have occurred through this evidence's admission, it did not *substantially* outweigh its probative value, especially given the deference provided to the district court in making these balancing determinations.⁸

⁸ Even if the pornographic-search-terms evidence was admitted in error, the error was harmless because (1) the evidence was not highly persuasive given the limited way it was presented by the supervised release agent in his testimony, (2) the defense had the ability to counter the evidence on cross-examination of the agent, and (3) the state only mentioned this evidence once in its closing argument. *See Hall*, 764 N.W.2d at 842 (explaining that an appellate court considers the strength of the evidence of guilt, how the evidence was presented and whether it was highly persuasive, if the evidence was used in closing argument, and the defense's ability to counter the evidence in determining whether wrongfully admitted evidence was harmless); *see also State v. Blanche*, 696 N.W.2d 351, 369 (Minn. 2005) (holding that an error is harmless if the guilty verdict is surely unattributable to the error).

II. The district court did not abuse its discretion by admitting relationship evidence about Abrams’s alleged sexual abuse against his minor biological niece.

Abrams next asserts that his biological niece should not have been allowed to testify because her testimony was not relevant, and any probative value was substantially outweighed by unfair prejudice to him. Additionally, he argues that the error in allowing her to testify was not harmless and severely impacted the jury’s verdict. The district court allowed the biological niece to testify, reasoning that her testimony was admissible under Minnesota Statutes section 634.20 (2022), which permits the introduction of “relationship evidence,” and that its probative value was not substantially outweighed by the danger of unfair prejudice to Abrams because it provided insight into the Abrams family and the delayed nature of the reports by the two alleged victims.

A district court has discretion to admit relationship evidence in domestic-abuse cases, such as criminal-sexual-conduct cases. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). Specifically, the relationship-evidence statute defines relationship evidence as:

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.

Minn. Stat. § 634.20.

Applying this statute to the record here, the district court did not abuse its discretion when it determined that the biological niece’s testimony was relationship evidence because

the biological niece is a family member who was alleging domestic conduct, which includes criminal sexual conduct, against Abrams. *Id.*; Minn. Stat. § 518B.01, subd. 2(a)(3) (2022). On top of meeting the statutory definition of relationship evidence, the testimony had high probative value because it provided relevant context into Abrams's relationship with other family members outside of the two testifying victims, and insight into why the two alleged victims' reports of sexual assault were delayed. *See State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008) ("Evidence that helps to establish the relationship between the victim and the defendant or which places the event in context bolsters its probative value."), *rev. denied* (Minn. Oct. 29, 2008). Biological niece's testimony shows that the Abrams family had a history of not believing the children who claimed sexual assault by Abrams and provided context for how Abrams has interacted with other children within the family.

Nor was the relevance of this relationship evidence substantially outweighed by the danger of unfair prejudice to Abrams. Although biological niece's testimony bolstered the credibility of niece and daughter, especially with regard to the delayed reporting of their allegations, it also bolstered Abrams's credibility. For instance, biological niece denied daughter's claim that she walked in on her being tied up by Abrams, and she said she loves Abrams, even after everything that had happened between them. Finally, any prejudice to Abrams from this testimony was mitigated by two cautionary instructions, provided before the testimony was introduced and before jury deliberations. This is especially true when we are to assume the jury followed the district court's limiting instruction, which directed the jury "not to convict [Abrams] on the basis of similar conduct on a prior occasion."

State v. Pendleton, 706 N.W.2d 500, 509 (Minn. 2005); *see also 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). Thus the district court did not abuse its discretion when it admitted biological niece’s testimony as relationship evidence.⁹

In sum, the district court did not abuse its discretion in admitting the pornographic-search-term and relationship evidence because the evidence was relevant and its potential for unfair prejudice did not substantially outweigh its probative value.

Affirmed.

⁹ Even if the relationship evidence was admitted in error, any error was harmless given the entire trial record. Biological niece’s testimony was not highly persuasive because it lessened the credibility of daughter’s testimony when she rebutted seeing daughter tied up by Abrams; the state’s theory of the case did not rely heavily on biological niece’s testimony because it was only mentioned three times out of the state’s 30-page closing argument; and the defense had the opportunity to counter the evidence at trial through cross-examination. *See State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (explaining that the prosecutor’s sparse use of relationship evidence was not prejudicial to the defendant); *see also Hall*, 764 N.W.2d at 842 (stating that an appellate court considers whether the testimony was highly persuasive, if the evidence was used in closing argument, and the defense’s ability to counter the evidence in determining whether wrongfully admitted evidence was harmless).