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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0695**

State of Minnesota,
Respondent,

vs.

Scott Solon Schaefer-Bonovsky,
Appellant.

**Filed May 15, 2023
Affirmed
Bratvold, Judge**

Stearns County District Court
File No. 73-CR-21-2370

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal, appellant argues that the district court erred by admitting evidence of appellant's prior domestic conduct against the victim as relationship evidence

under Minn. Stat. § 634.20 (2022). Because the district court did not abuse its discretion by admitting the challenged evidence, we affirm.

FACTS

Appellant Scott Solon Schaefer-Bonovsky and H.W. grew up together. They “reconnect[ed]” in December 2017 and began a relationship. H.W. and Schaefer-Bonovsky broke up, but they reunited in December 2020, and H.W. “immediately” began living with Schaefer-Bonovsky in Avon. Before her relationship with Schaefer-Bonovsky, H.W. had two children with A.J.

In December 2021, a jury convicted Schaefer-Bonovsky of one count of stalking under Minn. Stat. § 609.749, subd. 5(a) (2020), and seven counts of domestic assault under Minn. Stat. § 609.2242, subd. 4 (2020); all offenses involved H.W. and occurred between January and March 2021. The following summarizes the evidence received during the jury trial.

Around January 17, 2021, H.W.’s employer fired her for poor attendance. Schaefer-Bonovsky picked up H.W. from work, and on the drive home, they began to argue. Schaefer-Bonovsky accused H.W. of “cheating on him,” which H.W. denied. Schaefer-Bonovsky was “not letting the cheating go” and told H.W. that he did not believe H.W. got fired for “having bad attendance.” H.W. was “sick of it,” so she lied and said she had cheated. Schaefer-Bonovsky “slapped [H.W.] across the face” and “hit [her] twice on both sides of [her] face and by [her] ears.”

After the January 17 incident, Schaefer-Bonovsky would not allow H.W. to “be on a phone call without him by [her] side.” Also, H.W. could not move freely around the

apartment “most of the time” because Schaefer-Bonovsky used locks on doors inside the apartment for which H.W. “couldn’t have a key.” In addition, Schaefer-Bonovsky put “holes . . . in the wall with drills, hammers, screwdrivers” to “scare [H.W.] into doing stuff that [she] didn’t want to do.”

On February 4, 2021, Schaefer-Bonovsky told H.W. that he was upset because she did not respect him as much as she did A.J., the father of H.W.’s children. Schaefer-Bonovsky “squirted [lubricant] all over” H.W.’s clothes, and H.W. “said some things to . . . make [Schaefer-Bonovsky] upset.” Schaefer-Bonovsky grabbed H.W.’s arm, pushed her down on the bed, headbutted her, and slapped her on the side of her face. H.W. covered her face with her hands, and Schaefer-Bonovsky purposely hit H.W.’s hands so that her knuckles would “drag into [her] eye sockets,” resulting in “black and blue eyes.” H.W. also had bruising down her arm and injuries to her lip and nose.

On February 21, 2021, H.W. told Schaefer-Bonovsky that she wanted to attend her son’s birthday party at A.J.’s house without Schaefer-Bonovsky. Schaefer-Bonovsky told H.W. she “couldn’t leave the house unless” he was with her. H.W. “told him [she] was going to leave regardless” and “called him names.” Schaefer-Bonovsky choked H.W., slapped her in the face, and split her lip.

On March 22, 2021, Schaefer-Bonovsky and H.W. argued over H.W. “wanting to leave.” Schaefer-Bonovsky “choked [H.W.] up against the closet wall,” and she responded by “hit[ting] him right in the forehead.” Schaefer-Bonovsky slapped H.W., which caused her lip to bleed. H.W. left the apartment when Schaefer-Bonovsky’s mother, who lived

below them, came to “get [H.W.] out.” H.W. later returned to the apartment, and Schaefer-Bonovsky “apologized.”

On April 2, 2021, H.W. moved out of the apartment she shared with Schaefer-Bonovsky. On April 5, H.W. contacted a high-school acquaintance, who was a sheriff’s deputy, and “mentioned some instances of domestic violence.” The sheriff’s deputy arranged a meeting for H.W. at her local police department for later the same day, but H.W. did not attend. Four days later, H.W. “changed her mind” and gave a statement to a local law-enforcement officer describing the physical violence she experienced during her relationship with Schaefer-Bonovsky. At the time of her statement, H.W. did not have any physical injuries or photos of her injuries. She explained that Schaefer-Bonovsky had “deleted” the photos from her phone.

Respondent State of Minnesota charged Schaefer-Bonovsky with one count of stalking and seven counts of domestic assault. Before trial, the state moved to admit evidence of two domestic assaults from 2018 and two violations of a domestic-abuse no-contact order (DANCO) as relationship evidence under Minn. Stat. § 634.20. At a hearing on the motion, Schaefer-Bonovsky objected to the proposed relationship evidence as lacking probative value and being unfairly prejudicial.

The district court granted the state’s motion to admit the relationship evidence. The district court determined that the relationship evidence was “probative on the issue of the victim’s credibility and . . . helpful in establishing the relationship between the victim and the defendant” and would “place the charged events in context.” The district court reasoned that the relationship evidence “may be particularly helpful . . . in assessing the credibility

of the witnesses in light of the fact that the victim's report of [the 2021] offenses to law enforcement was delayed and physical evidence of the alleged assaults is lacking."

At trial, H.W. testified about two 2018 domestic assaults. On May 25, 2018, Schaefer-Bonovsky hit H.W. on "the side of [her] head multiple different times," "choked [her] to the point where [she] urinated," and punched her eye, causing it to swell shut. On May 28, 2018, Schaefer-Bonovsky "slapped [H.W.] in the face" and "choked [her] again" so that she urinated. The district court admitted photographs taken of H.W.'s injuries on May 28, 2018, along with a text message including more photographs from the same day. A DANCO was issued after the May 2018 incidents, yet H.W. testified that Schaefer-Bonovsky called her twice while the DANCO was in effect.

In addition to H.W., the state called the following witnesses: the sheriff's deputy who spoke with H.W. on April 5, the police officer who took H.W.'s statement, and an expert on domestic violence. Schaefer-Bonovsky did not testify or call any witnesses.

The jury returned guilty verdicts on all charges. In a special verdict, the jury also found that Schaefer-Bonovsky had five or more prior felony convictions and that the present offenses were committed as part of a pattern of criminal conduct. The district court imposed an enhanced sentence of 102 months in prison on Schaefer-Bonovsky's stalking conviction and entered judgments of conviction on all seven counts of domestic assault.

Schaefer-Bonovsky appeals.

DECISION

Schaefer-Bonovsky argues that the district court abused its discretion by admitting, as relationship evidence, four instances of domestic conduct between him and H.W. that occurred in 2018.

In general, evidence of prior criminal offenses unrelated to the crime for which a person is on trial is inadmissible. *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965); *see also* Minn. R. Evid. 404(b) (generally excluding evidence of “another crime, wrong, or act”). An exception exists for “[e]vidence of domestic conduct by the accused against the victim of domestic conduct . . . 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; *see State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (adopting Minn. Stat. § 634.20 as a rule of evidence). “Domestic conduct” includes, among other things, “evidence of domestic abuse” and “violation[s] of a domestic abuse no contact order.” Minn. Stat. § 634.20.

The supreme court has held that “evidence of similar conduct in domestic abuse trials is relevant and admissible unless it should be excluded for the reasons listed” in Minn. Stat. § 634.20. *McCoy*, 682 N.W.2d at 159. This evidence, as described in Minn. Stat. § 634.20, “is commonly referred to as relationship evidence.”¹ *State v. Matthews*,

¹ We note that relationship evidence under section 634.20 refers to “[e]vidence of domestic conduct,” even though relationship evidence in the context of Minn. R. Evid. 404(b) refers to “character evidence that may be offered to show the strained relationship between the

779 N.W.2d 543, 549 (Minn. 2010). Appellate courts review the admission of relationship evidence for an abuse of discretion. *Id.* at 553. The appellant “must prove that the admission of evidence was erroneous and prejudicial.” *Loving*, 775 N.W.2d at 879. Appellate courts “will reverse the district court’s ruling if the error substantially influenced the jury’s decision.” *Id.*

In his brief to this court, Schaefer-Bonovsky argues that (1) the relationship evidence “had little probative value”; (2) any probative value was “substantially outweighed by the danger of unfair prejudice”; and (3) “there is a reasonable possibility that the improperly admitted relationship evidence substantially affected the jury’s verdict.” We address these arguments in turn.

A. Probative Value

Schaefer-Bonovsky argues that the “relationship evidence had little probative value” because this was “not a case that was difficult to prosecute,” such as one “where the complainant claims she does not remember the events.” We disagree that the probative value of relationship evidence is tied to the difficulty of a case.

The probative value of relationship evidence is well established by caselaw. The supreme court has recognized the “inherent” probative value “of evidence of past acts of violence committed by the same defendant against the same victim.” *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999). “Domestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate

accused and the victim [and] is relevant to establishing motive and intent,” *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009) (quotation omitted).

over time, and it is often underreported.” *McCoy*, 682 N.W.2d at 161. Thus, under Minn. Stat. § 634.20, “evidence of prior conduct between the accused and the alleged victim . . . may be offered to illuminate the history of the relationship, that is, to put the crime charged in the context of the relationship between the two.” *Id.* at 159. In *State v. Andersen*, we determined that evidence of the defendant’s “verbal[] and physical[] abuse[]” of the victim “earlier in their relationship” had “obvious probative value” because it “informed the jury of the nature of their relationship, the times that [the victim] felt afraid of [the defendant], and the times that [the defendant] attempted to manipulate, control, and restrain her.” 900 N.W.2d 438, 441 (Minn. App. 2017); *see also State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (determining that evidence that the defendant twice violated an order for protection was “probative of a material fact, namely the history of [the defendant and victim’s] relationship”); *State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008) (stating that evidence establishing the relationship between the victim and the defendant has probative value). Like the relationship evidence admitted in *Andersen*, H.W.’s testimony about the 2018 abuse by Schaefer-Bonovsky and about his DANCO violations provided context for their relationship.

The district court also determined that the 2018 relationship evidence tended to prove H.W.’s credibility. At trial, Schaefer-Bonovsky tried to discredit H.W. by arguing that she repeatedly failed to call the police and that her delay in reporting showed the assaults “didn’t happen.” Thus, the evidence of Schaefer-Bonovsky’s 2018 abuse was probative of H.W.’s credibility. *See Lindsey*, 755 N.W.2d at 757 (concluding that

relationship evidence that helped the jury judge witness credibility “had significant probative value”).

Schaefer-Bonovsky contends that “it is unclear how acts of domestic conduct nearly three years earlier put the charged crimes in context” or made H.W. “more credible, unless the jury engaged in impermissible bad character reasoning.” Minnesota courts, however, have upheld the admission of relationship evidence and determined it was probative even though it occurred up to nine years before the charged offense. *See, e.g., State v. Benton*, 858 N.W.2d 535, 538, 542 (Minn. 2015) (affirming the admission of the defendant’s acts of domestic abuse against his sister and ex-girlfriend as relationship evidence even though the acts occurred six or seven years earlier); *State v. Ware*, 856 N.W.2d 719, 724, 730 (Minn. App. 2014) (affirming the admission of the defendant’s acts of domestic abuse against an ex-girlfriend as relationship evidence even though the acts occurred about four and nine years before the charged crime).

In sum, evidence about Schaefer-Bonovsky’s 2018 domestic assaults and DANCO violations had probative value because the evidence showed the nature of H.W. and Schaefer-Bonovsky’s relationship and was relevant to H.W.’s credibility.

B. Danger of Unfair Prejudice

Schaefer-Bonovsky argues that the danger of unfair prejudice was high because the evidence of Schaefer-Bonovsky’s 2018 assaults of H.W. and DANCO violations “could only have served to persuade the jury that . . . [Schaefer-Bonovsky] must have acted in conformity with that character by assaulting [H.W.] again” in 2021.

“When 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.” *Bell*, 719 N.W.2d at 641 (quotation omitted). “Evidence that is probative, though it may arouse the passions of the jury, will still be admitted unless the tendency of the evidence to persuade by illegitimate means overwhelms its legitimate probative force.” *State v. Schulz*, 691 N.W.2d 474, 478-79 (Minn. 2005).

We conclude that the relationship evidence admitted against Schaefer-Bonovsky was not unfairly prejudicial. Before the relationship evidence was introduced at trial, the district court twice gave a cautionary instruction that the evidence was “being offered for the limited purpose of demonstrating the nature and extent of the relationship between” Schaefer-Bonovsky and H.W. and that the jury was “not to convict [Schaefer-Bonovsky] based on [his] conduct” from 2018. During the final jury instructions, the district court read the cautionary instruction a third time.

Minnesota courts have repeatedly upheld the admission of relationship evidence when paired with cautionary instructions. *See, e.g., Benton*, 858 N.W.2d at 542; *Andersen*, 900 N.W.2d at 441-42. Here, the district court “minimized any potential prejudice” to Schaefer-Bonovsky by providing several cautionary instructions about the relationship evidence. *Lindsey*, 755 N.W.2d at 757; *see Ware*, 856 N.W.2d at 730 (“[T]he danger of unfair prejudice in this case is low because the district court gave the jury a cautionary instruction.”). And appellate courts “must presume that juries follow instructions given by the [district] court.” *Matthews*, 779 N.W.2d at 550.

In addition, the number of instances admitted as relationship evidence was limited. The supreme court has upheld the admission of relationship evidence involving up to 12 prior incidents of domestic conduct. *Id.* at 553. H.W.’s testimony was limited to four prior incidents involving Schaefer-Bonovsky and accounted for only a small portion of the trial transcript.

Thus, based on the district court’s three cautionary instructions and the limited number of prior instances offered as relationship evidence, the danger of unfair prejudice did not substantially outweigh the evidence’s probative value.

C. Substantial Influence on the Jury’s Verdict

Because we conclude the district court did not abuse its discretion by admitting the 2018 incidents as relationship evidence, we need not consider Schaefer-Bonovsky’s argument that the relationship evidence substantially influenced the jury’s decision. But even if we assume the district court abused its discretion by admitting the relationship evidence, we would nonetheless conclude that the relationship evidence did not substantially affect Schaefer-Bonovsky’s rights.

To obtain relief on appeal, Schaefer-Bonovsky must show he was prejudiced by the relationship evidence. *See Lindsey*, 755 N.W.2d at 755 (stating that appellant has the burden to establish prejudice). “A conviction obtained through erroneous admission of evidence must be reversed if there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Benton*, 858 N.W.2d at 541 (quotation omitted). In determining whether the admission of relationship evidence significantly affected the verdict, appellate courts “consider [1] whether the district court provided the

jury a cautionary instruction, [2] whether the State dwelled on the evidence in closing argument, and [3] whether the evidence of guilt was strong.” *State v. Fraga*, 898 N.W.2d 263, 274 (Minn. 2017). We address Schaefer-Bonovsky’s arguments in light of these three considerations.

First, Schaefer-Bonovsky argues the district court’s cautionary instructions were “insufficient to defeat the jury’s natural inclination to consider the prior assaults as propensity evidence.” As detailed above, the district court provided three cautionary instructions throughout the trial, and we assume that the jury followed these instructions. *See Matthews*, 779 N.W.2d at 550.

Second, Schaefer-Bonovsky argues the “relationship evidence was a critical part of the state’s case.” We disagree. The state did not dwell on the relationship evidence in closing argument. *See Benton*, 858 N.W.2d at 542 (determining that the admission of relationship evidence was harmless where the state made “sparse use of relationship evidence in closing argument”). The prosecuting attorney only broadly referred to the 2018 incidents between Schaefer-Bonovsky and H.W during its closing arguments. The prosecuting attorney argued that “[i]n context of this relationship and the context of their history together, . . . Schaefer-Bonovsky knew that [H.W.] would be in fear, and that is what it caused whenever he slapped her.”

The prosecuting attorney also reminded the jury that during the 2018 phone calls violating the DANCO, Schaefer-Bonovsky tried to “encourage [H.W.] not to call law enforcement ever again.” The prosecuting attorney argued, “That’s the reason [H.W.] didn’t ultimately call law enforcement in these instances.” The prosecuting attorney

cautioned the jury on rebuttal that “the incidents from 2018 are not to be used by you to determine any type of guilt for [Schaefer-Bonovsky]” but could be used “to help you determine the credibility of [H.W.].”

Third, the record evidence supporting Schaefer-Bonovsky’s convictions was relatively strong. H.W.’s testimony about the 2021 assaults was detailed and largely consistent with her prior statements to law enforcement. The state offered photographs of Schaefer-Bonovsky’s apartment that showed additional locks and holes in the wall. The state also offered text messages between Schaefer-Bonovsky and H.W. from March 22, 2021. In the text messages, H.W. said, “I’m not gonna be abused anymore,” and “I’ve been begging and asking you to stop.” As a result, even if the district court erred in admitting relationship evidence, any error was harmless. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”).

In sum, for the reasons discussed, we conclude the district court did not abuse its discretion by admitting relationship evidence against Schaefer-Bonovsky. Alternatively, we conclude that any error in admitting the relationship evidence was harmless.

Affirmed.