

*This opinion is nonprecedential except as provided by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
A23-0065**

State of Minnesota,
Respondent,

vs.

Ricky Jesse Lopez,
Appellant.

**Filed January 29, 2024
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-CR-22-1265

Keith Ellison, Attorney General, Thomas Ragatz, Assistant Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction of first-degree criminal sexual conduct, appellant argues that the district court abused its discretion by permitting the state to introduce relationship evidence from two of appellant's former romantic partners.

Because the district court acted within its discretion by determining that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, we affirm.

FACTS

Following an assaultive incident with his girlfriend, L.J., respondent State of Minnesota charged appellant Ricky Jesse Lopez with four counts: (1) first-degree criminal sexual penetration, in violation of Minn. Stat. § 609.342, subd. 1(b) (Supp. 2021); (2) terroristic threat of violence, in violation of Minn. Stat. § 609.713, subd. 3(a)(1) (2020); (3) felony domestic assault, in violation of Minn. Stat. § 609.2242, subd. 4 (2020); and (4) interfering with a 911 call, in violation of Minn. Stat. § 609.78, subd. 2(1) (2020).

Lopez pleaded not guilty, and the case was set for trial. Before the trial, the state filed a motion *in limine* seeking, pursuant to Minn. Stat. § 634.20 (2022), to introduce evidence of similar conduct by Lopez against previous romantic partners, D.C. and N.M. After hearing arguments from the parties on the first day of trial, the district court permitted the state to introduce the evidence and stated that it intended to read a limiting instruction before the testimony of each witness. The district court prohibited the state from eliciting certain testimony from D.C. and N.M., such as the fact that one of them was pregnant at the time of the assault and that one of them was stabbed during Lopez’s assault on her. The following facts derive from the jury trial.

Lopez met L.J. on Facebook in October 2021. L.J. traveled from Arizona to Minnesota to “be with [Lopez]” in the fall of 2021. Lopez and L.J. were in a romantic relationship and lived in a house together in St. Paul.

On March 5, 2022, Lopez “flipped out” and punched L.J. in the nose with a closed fist. Lopez then held a screwdriver “inches from” L.J.’s head and told her that if she did not perform oral sex on Lopez and make him ejaculate, he would kill her. At some point, L.J. attempted to use her cell phone to call the police. Lopez took the cell phone from her, tried to break it in half, and stabbed it with the screwdriver. The assault ended when Lopez fell asleep. When L.J. heard Lopez snoring, she ran downstairs and left the house.

L.J. ran to a nearby fast-food restaurant and used an employee’s phone to call the police. The police arrived at the restaurant and began interviewing L.J. Lopez arrived at the restaurant shortly thereafter, and the police took Lopez into custody.

Next, D.C. and N.M. testified about Lopez’s previous conduct towards them. Before the testimony of each witness, the district court read a limiting instruction to the jury.

D.C. testified first and stated that she was in an intermittent romantic relationship with Lopez between 2007 and 2014. D.C. testified that in March of 2014 she had a fight with Lopez and that he hit her multiple times over several hours. D.C. further testified that Lopez prevented her from leaving the house during the assault. D.C. testified that, after Lopez fell asleep, she was able to get the keys from him and leave the house.

N.M. testified that she had married Lopez in November 2017 and since divorced him. N.M. testified that in January 2018 she awoke to Lopez punching her with a closed fist. N.M. testified that she received injuries, including a gash to the back of her head and a knocked-out tooth. N.M. testified that Lopez “aggressively” digitally penetrated her.

N.M. testified that Lopez had taken her cell phone from her during the assault and that she did not feel free to leave during the assault.

The jury found Lopez guilty on all four counts, and the district court sentenced Lopez.

Lopez appeals.

DECISION

The district court's decision to admit similar-conduct or relationship evidence pursuant to Minn. Stat. § 634.20 is reviewed for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). "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). The appellant "must prove that the admission of evidence was erroneous and prejudicial." *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009).

Section 634.20 states, in relevant part:

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 "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subdivision 2.

Minn. Stat. § 634.20. The evidence presented under Minn. Stat. § 634.20 is often referred to as "relationship evidence." *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010).

Lopez first contends that the district court erred because the testimony by D.C. and N.M. had minimal probative value, asserting that their testimony was not necessary to

provide context for the relationship of Lopez and L.J.¹ We are not persuaded. In *State v. Valentine*, we stated, “Obviously, evidence showing how a defendant treats his family or household members, such as his former spouses or other girlfriends, sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” 787 N.W.2d 630, 637 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010). After reviewing the district court’s meticulous analysis of the section 634.20 balancing test, we conclude that the admission of relationship evidence from D.C. and N.M. was not an abuse of discretion because, as in *Valentine*, the evidence “sheds light on how the defendant interacts with those close to him.” *Id.*

The testimony of D.C. and N.M. was highly probative in this case because it established that Lopez had treated prior romantic partners in a manner similar to the way L.J. testified that Lopez treated her. And, because the defense attacked the credibility of L.J., this testimony was highly probative.

Lopez next argues that the testimony’s probative value was substantially outweighed by its danger of unfair prejudice. “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.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (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

¹ Lopez also asserts that any error in admitting the relationship evidence was not harmless and should result in a new trial. Because we determine that the district court did not err, we do not reach this argument.

illegitimate means overwhelms its legitimate probative force.” *State v. Schulz*, 691 N.W.2d 474, 478-79 (Minn. 2005).

As we have already noted, the district court carefully considered the section 634.20 evidence, permitting some testimony, but precluding other portions of it. Additionally, the district court read a cautionary instruction² before each witness testified, and, again, as part of its final instructions to the jury before the jury deliberated. In its instruction, the district court told the jury that the testimony was “offered for the limited purpose of demonstrating the nature and extent of the relationship between [D.C. and N.M.] and [Lopez].” The district court instructed the jury that “[t]his evidence is not to be used to prove the character of the defendant or that the defendant acted in conformity with such character,” and further cautioned that Lopez “is not being tried for and may not be convicted of any offenses other than the charged offenses.”

Minnesota courts have repeatedly upheld the admission of relationship evidence when paired with cautionary instructions. *See, e.g., State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (stating that the numerous cautionary instructions provided by the district court “lessened the probability of undue weight being given by the jury to the evidence”); *State v. Andersen*, 900 N.W.2d 438, 441-42 (Minn. App. 2017) (observing that the district court’s cautionary instructions “lessened any probability that the jury would rely improperly on relationship evidence”). Moreover, appellate courts “presume that juries

² For the cautionary instruction, the district court used language identical to the Jury Instruction Guide titled “Cautionary Instruction on Receipt of Testimony of Other Domestic Conduct.” 10 *Minnesota Practice*, CRIMJIG 2.04 (2023). It also added a sentence to the end of the instruction, warning the jury that convicting Lopez based on the relationship evidence “might result in unjust double punishment.”

follow instructions given by the [district] court.” *Matthews*, 779 N.W.2d at 550. Because the district court gave the limiting instruction and because we presume that the jury followed the instruction, the danger of unfair prejudice is low.

In sum, because the district court carefully considered the evidence and concluded that the probative value of the relationship evidence was not substantially outweighed by the danger of unfair prejudice, it acted within its discretion by admitting the relationship evidence.³

Affirmed.

³ In a *pro se* supplemental brief, Lopez raises several additional claims for our review: he challenges the credibility of L.J. and one of the officers, he claims he was not read his *Miranda* rights, he claims ineffective assistance of counsel, and he challenges the sufficiency of the evidence. We conclude that Lopez has not raised any reversible error. As to his first argument, we defer to the credibility determinations of the fact-finder. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, 508 U.S. 366 (1993). We do not consider his argument regarding his *Miranda* rights because we generally do not consider matters not argued to the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). And Lopez merely asserted his claims of ineffective assistance of counsel and sufficiency of the evidence without providing any authority. “An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *State v. Anderson*, 871 N.W.2d 910, 915 (Minn. 2015) (quotation omitted). Because these claims were inadequately briefed, and because we have found no obvious prejudicial error on mere inspection, we conclude that Lopez has waived these claims.