

*This opinion is nonprecedential except as provided by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
A23-1557**

State of Minnesota,
Respondent,

vs.

Davion Robert Magee,
Appellant.

**Filed August 12, 2024
Affirmed in part, reversed in part, and remanded
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-CR-21-2377

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Assistant County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Reyes, Judge; and Kirk,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction and sentence for felony domestic assault, arguing that the district court abused its discretion by admitting unfairly prejudicial relationship evidence and clearly erred in calculating the custody credit to which he was entitled at sentencing. We affirm appellant's conviction but reverse and remand his sentence for the district court to correct his custody credit.

FACTS

On the evening of August 5, 2021, Hermantown police were dispatched to the Walmart parking lot where reporting witness A.M. saw a man, later identified as appellant Davion Robert Magee, "hitting" a female before getting into a car and driving away. A.M. reported that Magee struck victim S.M. at least three times and, per her testimony, S.M. screamed "911," which prompted A.M. to contact police. A.M. also provided dispatch with Magee's license-plate number.

S.M. told the responding officers that she and Magee used to be in a romantic relationship and met at Walmart to purchase a bicycle for their daughter's ninth birthday. Magee became upset while in the store because the bicycle, along with other gift items, rang up to more than his \$300 budget. S.M. offered to pay the difference; Magee angrily responded by telling her that he "was going to beat [her] up outside." S.M. told police that after she reached her car, Magee approached her, punched her in the throat, and tried to strangle her. One of the officers noted and photographed red marks on S.M.'s throat and arms and scratches on the inside of her upper left arm.

Magee was charged by an amended complaint with felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2020),¹ and the case proceeded to a jury trial. On the first day of trial, the district court granted Magee’s request for a self-defense instruction. The prosecutor subsequently asked the court to admit S.M.’s testimony about previous violence between her and Magee as relationship evidence. Over Magee’s objection, the district court allowed the relationship evidence to come in, noting that the proffered evidence should be “relatively minimal.”

S.M. testified that Magee was violent with her “[a] couple times when [their] daughter was a baby, and when [their] daughter was six,” and that Magee “wasn’t really violent with [her] except for when [their] daughter was like little.”² But she explained that during the period of time leading up to the incident, she and Magee were co-parenting “under good terms.” For that reason, she “didn’t really believe” Magee would carry out his threat to beat her up. S.M. testified that she was putting her son in his car seat when Magee started “attacking” her and that she responded by punching him in the face “to get him off of [her].”

The jury found Magee guilty, and the district court sentenced him to 33 months in prison with custody credit for 194 days.

Magee appeals.

¹ Magee stipulated that the domestic assault was a felony based on his prior convictions.

² S.M. told the police officer at the scene that Magee had only been violent toward her once, when their daughter was one year old.

DECISION

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

Generally, evidence of a person's bad acts unrelated to the crime for which they are on trial is prohibited. Minn. R. Evid. 404(b); *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 when its "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." *Id.*; accord *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (holding that the district court did not abuse its discretion in allowing relationship evidence because it "could have assisted the jury by providing a context with[in] which it could better judge the credibility of the principals in the relationship" and adopting Minn. Stat. § 634.20 as a rule of evidence).

We review the admission of relationship evidence for an abuse of discretion. *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009). "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) (quoting *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017)). But we will not reverse a conviction based on the

erroneous admission of evidence if the error is harmless. *See Loving*, 775 N.W.2d at 879. An error is harmless “[w]hen there is no reasonable possibility that it substantially influenced the jury’s decision.” *State v. Harvey*, 932 N.W.2d 792, 810 (Minn. 2019) (quotation omitted).

Magee argues that the district court abused its discretion by allowing S.M. to testify about past violence in their relationship. He acknowledges this is relationship evidence but asserts that it is too remote in time to be relevant and is unduly prejudicial. And he contends that a new trial is required because this is a “close case” and the relationship evidence “tipped the scales” in favor of his guilt. We are not persuaded.

First, the relationship evidence is highly probative of disputed trial issues. Importantly, the relationship evidence related to the same parties involved here—Magee and S.M. *See State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006) (noting relationship evidence is intended to “illuminate the relationship between the accused and the alleged victim”). And it was only after the district court allowed Magee to argue self-defense that the state requested admission of the relationship evidence. In doing so, the prosecutor asserted that S.M.’s perception of Magee’s intention and ability to harm her were highly relevant.

Second, the limited relationship evidence is not unfairly prejudicial. The prosecutor asked S.M., “Has Mr. Magee ever been violent with you?” And S.M. responded, “Yes.” The prosecutor then asked S.M. to “[t]ell [them] about that,” and S.M. said that Magee was violent “[a] couple times when my daughter was a baby, and then when my daughter was six.” That was the extent of the relationship evidence. S.M. did not elaborate on the nature

of Magee's prior violent conduct or describe any resulting injury. In short, S.M.'s testimony was brief and not presented in an emotional manner tending to garner a particularly sympathetic response.

We note that S.M. also described the positive aspects of her relationship with Magee including their ability to co-parent and stay on "good terms." Relationship evidence is supposed to help "establish the relationship between the victim and the defendant or . . . place[] the event[s] in context." *State v. Lindsey*, 755 N.W.2d 752, 756-57 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Oct. 29, 2008). That is what S.M.'s testimony did. When taken as a whole, S.M.'s testimony suggests that she and Magee have a rocky relationship, with both positive and negative dynamics. This is relevant to understanding the relationship and contextualizing the parking lot incident. On this record, we discern no abuse of discretion by the district court in admitting the relationship evidence.

Moreover, any error in admitting the relationship evidence is harmless because of the overwhelming evidence of Magee's guilt. In addition to S.M.'s testimony, eyewitness A.M. testified that she saw Magee repeatedly hit S.M. and heard S.M. screaming for someone to call 911. Security footage from the parking lot reveals a scuffle between Magee and S.M. consistent with how S.M. described the incident. Photographs taken by the police at the scene show red marks and scratches on S.M.'s neck and arms that are consistent with S.M.'s testimony. And the district court properly instructed the jury prior to its deliberations that S.M.'s testimony about Magee's prior violence toward her "was admitted for the limited purpose of demonstrating the nature and extent of the relationship between

[Magee] and [S.M.].” This record persuades us that there is no reasonable possibility that the limited relationship evidence substantially influenced the jury’s verdict.

II. The district court clearly erred in calculating Magee’s custody credit.

“A criminal defendant is entitled to custody credit for time spent in custody ‘in connection with the offense or behavioral incident being sentenced.’” *State v. Roy*, 928 N.W.2d 341, 345 (Minn. 2019) (quoting Minn. R. Crim. P. 27.03, subd. 4(B)). The defendant bears the burden of establishing that they are entitled to custody credit. *Id.* at 344. A “district court’s decision whether to award custody credit is a mixed question of fact and law” *Id.* (quotation omitted). We review factual findings for clear error and questions of law de novo. *Id.*

The parties agree that the district court erred in calculating Magee’s custody credit. But they disagree as to the number of days Magee spent in custody before sentencing. The presentence investigation report (PSI) prepared by probation services indicates the following dates of presentence incarceration:

08/05/2021-08/06/2021 = 2 days
11/10/2021-11/10/2021 = 1 day
11/24/2021-01/01/2022 = 39 days
01/18/2023-02/22/2023 = 36 days
02/23/2023-02/24/2023 = 2 days
03/15/2023-04/12/2023 = 29 days
06/01/2023-06/13/2023 = 13 days
03/13/2023-08/24/2023 = 72 days
Total Days = 194

Magee argues that this calculation must be corrected to reflect that he was in custody for 165 days between March 13 and August 24, 2023. The state contends that the PSI contains discrepancies—namely overlapping dates among the listed time frames—that the

record does not resolve. We agree with the state. Accordingly, we reverse Magee's sentence and remand for the district court to make the necessary factual findings to determine the custody credit to which Magee is entitled.

Affirmed in part, reversed in part, and remanded.