

*This opinion is nonprecedential except as provided by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
A25-0622**

State of Minnesota,
Respondent,

vs.

Dylan Alexander Domino,
Appellant.

**Filed April 6, 2026
Reversed and remanded
Ross, Judge**

Anoka County District Court
File No. 02-CR-24-4493

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

Brad Johnson, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney,
Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bratvold, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

ROSS, Judge

Dylan Domino appeals from his convictions of felony stalking, violating a harassment restraining order, and threats of violence, arguing that the jury found him guilty by relying on other-acts evidence that the district court improperly admitted and that the prosecutor improperly emphasized. The state acknowledges that the district court “mistakenly” admitted the evidence and argues only that the improper admission was harmless beyond a reasonable doubt because, among other things, the jury received an instruction on the use of the evidence. Because we conclude that the instruction aggravated rather than mitigated the error and that other circumstances establish a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict, we reverse Domino’s conviction and remand for a new trial.

FACTS

The state charged Dylan Domino with one count of stalking, one count of violating a harassment restraining order (HRO), and one count of threats of violence after police investigated a woman’s June 2024 report that Domino had made unsolicited, unwanted communications to her. We will call this woman “April,” a name that we have randomly chosen in the interest of protecting her privacy. April had reported that a Facebook user named “Kenzie Domino” had repeatedly contacted her on social media with threats of sexual violence against her and her children. April recognized the profile as belonging to her former brother-in-law, Dylan Domino, against whom she had obtained a 50-year HRO in 2018. The social-media messages included, among other statements, “I need you and

your kids to come over so I can rape you all!” and “I love you and I am going to make you my personal fuck puppet sex slave.”

At the beginning of Domino’s consequent criminal trial, the state moved *in limine* to admit four incidents of Domino’s alleged HRO violations as statutorily admissible relationship evidence under Minnesota Statutes section 634.20 (2024). Domino objected to the admissibility of two of them—a 2017 incident and a 2020 incident in which he had sent sexually explicit messages to April by phone and to her daughter by mail. He argued, among other things, that the relationship-evidence statute does not apply because none of the subjects protected by the violated HRO qualify as a “victim of domestic conduct” or as a “family or household member[,]” which are the only classes of victims covered by the statute. Minn. Stat. § 634.20. The prosecutor countered, telling the district court that a family or household relationship “is not required” under the statute, and the district court overruled Domino’s objection.

The prosecutor then elicited testimony from April about the communications for which Domino was on trial. And she also elicited April’s testimony about the contested evidence of Domino’s prior harassing communications.

Regarding the communications that formed the basis of the charges in the current case, April testified that Domino had “liked” several of her Facebook posts, called her husband multiple times on the platform, and sent her messages describing graphic sexual acts. He messaged, “I need you and your kids to come over so I can rape you all!” He wrote, “I love you and I am going to make you my personal fuck puppet sex slave.” Domino also sent a “friend request” to April on Snapchat. April did not respond to Domino’s

communications, but she preserved them as evidence of his misconduct. Her husband testified that Domino attempted to call him multiple times through Facebook. He said he answered one of these calls, during which Domino apologized but claimed that he could not resist contacting April. Domino then sent sexually suggestive images of himself to April's husband, who identified Domino by his profile picture, by his voice, and by a brief appearance on video.

Regarding Domino's prior communications that the state had introduced as "relationship evidence," April testified that Domino had sent her text messages during two months in 2017 after he became the subject of an HRO prohibiting him from contacting her. She said that in those messages, Domino called her a "fuck puppet slave," a "whore," and a "slut." She said that his text messages included threats that he would kidnap and torture her in her basement, rape her, impregnate her, and then rape her offspring. The prosecutor also elicited testimony from April that Domino had contacted her daughter by mail in 2020 with sexually explicit letters, referring to her daughter as a "whore" and, possibly, a "prostitute." April testified that she had been "beyond frightened" by Domino's messages.

One of the two trial prosecutors asked an investigating Lino Lakes police officer to testify as to whether Domino's communications violated the HRO:

Q: So the type of conduct that you observed through [April] on her cell phone, can you describe if and why those would be violations of that Order through your training and experience?

A: Yes. They were electronic communications with messages sent from the account, from the Domino account to hers, which

would be a violation of contact via means of a social networking site.

The prosecutor then had the officer explain why, in his police report, he had recommended the state charge Domino with a felony-level HRO violation. The prosecutor asked, “Can you explain what a qualified domestic-related offense is and how that relates to that comment in your report?” Then he followed by eliciting the officer’s testimony that Domino’s prior convictions “would qualify as prior domestic-related convictions,” as well as the officer’s affirmative response to, “So no doubt the conviction and sentencing dates match and these two convictions qualify for enhancement?”

A prosecutor also called investigating Lino Lakes Police Sergeant Katie Kraemer to testify. Sergeant Kraemer testified that she obtained subpoenaed Facebook records establishing that Domino had sent April the reported messages. Sergeant Kraemer said that she also forensically examined Domino’s cellphone, confirming that Domino had used the device to communicate with April on Snapchat. During Sergeant Kraemer’s testimony about her investigation into the trial allegations of Domino’s sexually harassing conduct toward April, the prosecutor directed the sergeant also to testify about Domino’s sexually harassing conduct *toward the sergeant*. Following the prosecutor’s lead, Sergeant Kraemer testified, “At one point [during my investigation], he asked me for nudes, and then he asked for my badge number and full name, I believe, and then he also sent me pictures of an erect penis.”

The prosecutor made a closing argument to the jury, emphasizing Domino’s prior convictions and contending that Domino used the same “unique terminology” as before

and that the jury had “heard the history” between them. The prosecutor maintained, “This wasn’t the first time. This isn’t the first time he’s threatened to rape her, to kidnap her, to torture her.”

The jury found Domino guilty on all counts, and the district court sentenced him to serve 21 months in prison.

Domino appeals.

DECISION

Domino raises two arguments to challenge his conviction. He argues first that the district court erroneously admitted evidence of his prior conduct as relationship evidence and that the improper evidence substantially affected the jury’s verdict. He argues second that the prosecutor engaged in misconduct by leading one investigator to opine as to whether Domino’s conduct met the elements of the offense charged and another to testify about Domino’s misconduct toward her. Because it is clear that Domino is entitled to a new trial based on the highly prejudicial nature of the impermissibly admitted evidence of his previous HRO violations, we reverse without addressing the other allegedly unfair aspects of Domino’s trial.

The district court, without dispute on appeal, erroneously admitted evidence of Domino’s prior convictions for twice violating the HRO because that evidence does not qualify as relationship evidence under the relationship-evidence statute. The district court has broad discretion on matters of evidence admissibility. *State v. Reese*, 692 N.W.2d 736, 740 (Minn. 2005). We will not consider reversing a conviction based on improper

admission of evidence unless the district court abused that discretion. *Id.* For the following reasons, we concluded that the district court abused its discretion here.

That the district court abused its discretion here is not in doubt. The district court admitted the evidence of Domino's 2017 and 2020 HRO violations against April and her daughter as relationship evidence over Domino's objection. Although evidence of a defendant's prior bad acts is generally inadmissible with limited exceptions, *see* Minn. R. Evid. 404(b)(1), the legislature has directed district courts to treat a certain category of prior bad acts, known as relationship evidence, as admissible unless unduly prejudicial, *see* Minn. Stat. § 634.20. This generally admissible 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. And "[d]omestic conduct" includes, among other things, "evidence of domestic abuse, violation of an order for protection . . . [and] violation of a harassment restraining order[.]" *Id.* We say that the district court's abuse of discretion is not in doubt here because, as the state correctly concedes, Domino was clearly correct when he urged the district court to exclude the evidence because neither April nor her daughter were a "victim of domestic conduct" or a member of Domino's family or household under the relationship-evidence statute. Domino was April's former brother-in-law, and no one had suggested that he and the two ever resided in the same household. The prosecutor wrongly advised the district court that being a member of the same household was not a prerequisite under the statute, and the district court wrongly accepted the prosecutor's advice.

The state asks us not to reverse, arguing that the improper admission of Domino’s 2017 and 2020 convictions for violating the HRO constitutes only harmless error. We do not reverse convictions based on errors that are harmless, meaning that we disregard “[a]ny error that does not affect [a criminal defendant’s] substantial rights.” Minn. R. Crim. P. 31.01. An appellant can prevail under harmless-error review by demonstrating that there is a “reasonable likelihood” that the erroneous admission of prior-bad-acts evidence substantially affected the verdict. *State v. Fraga*, 898 N.W.2d 263, 274 (Minn. 2017). We consider four factors in this review: the manner in which the prosecutor presented the evidence; whether the evidence was highly persuasive; whether the prosecutor used it in the state’s closing argument; and whether the defense effectively countered the evidence. *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024). Our careful review of the record leads us to conclude that the error was not harmless.

Regarding the first factor, the state presented the inadmissible evidence of Domino’s prior convictions in a prominent manner. We focus our analysis on the state’s use of the prior-bad-acts evidence throughout the case and the number of transcript pages that it occupies. *Id.* at 56. The prosecutor emphasized the “long history” between Domino and the subjects of his harassment in her opening statement and closing argument. The prosecutor also relied on Domino’s prior convictions in her examinations of April to demonstrate “the nature and extent of the [parties’] relationship” and in her examinations of a police officer to explain the enhancement of Domino’s charges. The prosecutor’s references to the inadmissible bad-acts evidence spans 12 pages of the more than 200-page trial transcript, excluding the *voir dire* portions. This reflects the prominent manner of its presentation.

Regarding the second factor, the inadmissible evidence was especially persuasive in nature. Impermissible character evidence has a particularly high persuasive value. *See id.* at 57. The inadmissible evidence here closely mirrored the charged conduct in its manner, subject, audience, and language. It appears as extremely strong evidence of Domino's propensity to do the very thing he was here accused of doing. It erased any potentially reasonable doubt as to whether he was the same self-named "Kenzie Domino" who sent the messages. The state is correct, however, that its unchallenged, admissible evidence of guilt was substantial and that strong evidence of guilt erodes the persuasive effect of wrongly admitted evidence. *Id.* at 59. That April identified Domino from his Facebook photo, that her husband recognized him from a captured video, and that Sergeant Kraemer tied Domino to the sender using subpoenaed Facebook records convincingly demonstrates that Domino was, in fact, the sender. The strength of the evidence lessens the impact of the error.

Regarding the third factor, the prosecutor accentuated the improperly admitted evidence three times in her concise closing argument. She drew specific attention to the "unique terminology" that Domino used in those prior messages, implying a close comparison to the terminology alleged in the charged conduct. She called the jury to consider the "history" between Domino and April, which by inference included mainly the harassment he previously committed against her. She spotlighted the evidence expressly to invite the jury's consideration of Domino's prior convictions to persuade based on propensity, suggesting that Domino acted in conformity with his character by violating the HRO once again with the same graphic sexual messaging he previously delivered. Because

the prosecutor emphasized the inadmissible evidence in her closing, this factor strongly favors Domino's position.

Regarding the fourth factor, Domino did not effectively counter the challenged evidence. Unrebutted evidence weighs against a determination that the error was harmless when the defendant challenges its admissibility but does not counter the evidence on its merits. *State v. Heller*, 12 N.W.3d 452, 468–69 (Minn. 2024). Domino challenged the admissibility of his prior convictions as relationship evidence. And he also attempted to cross-examine April about the April 2020 violation. But our reading of the cross-examination convinces us that it was particularly ineffective and did little, if anything, to mitigate the likelihood that the jury would rely on the improperly admitted evidence. This factor also favors rejecting the state's harmless-error argument.

The state offers two theories to convince us that the error was harmless. The first is not persuasive, and the second is quite persuasive—but it persuades away from the state's preferred disposition.

The state's first theory is that admitting Domino's prior HRO violations as relationship evidence is harmless because those convictions would have been admitted as *Spreigl* evidence under rule 404(b)(2) to prove his knowledge, intent, and absence of mistake. *See* Minn. R. Evid. 404(b)(2). The first problem with this theory is that the state did not attempt at trial to introduce the convictions as *Spreigl* evidence, and it could not have, because it had failed to provide early notice of its intent to do so as required by the applicable procedural rule. *See* Minn. R. Crim. P. 11.02(d) (requiring the district court to hear a motion for *Spreigl* evidence at a defendant's omnibus hearing). More difficult for

the state’s argument, we have no basis on which to deem it likely that the district court would have admitted the evidence had it been offered under a *Spreigl* premise. Unlike relationship evidence, which is generally admissible, *Spreigl* evidence is presumptively inadmissible. *See* Minn. R. Evid. 404(b)(2) (“Such evidence shall not be admitted in a criminal prosecution unless” it is relevant, proved by clear and convincing evidence, and its “probative value . . . is not outweighed by its potential for unfair prejudice to the defendant”). How the district court might have analyzed the evidence had the state provided proper notice, how Domino might have framed his objection, and how the district court would have resolved the dispute and ultimately applied its discretion as to whether to admit the evidence are, on appeal, matters of conjecture.

The state’s second theory actually works against its position. It maintains that “introduction of the other-acts evidence to the jury was . . . harmless because the district court properly gave cautionary instructions to the jury about the proper use of the other-acts evidence.” The state correctly emphasizes that we ought to consider the effect of a cautionary instruction as potentially mitigating the harmful effect of evidence. *See State v. Jaros*, 932 N.W.2d 466, 474 (Minn. 2019). It is true that cautionary instructions can provide a counterbalance to the prejudice caused by evidence that a jury might otherwise rely on to show a defendant’s propensity to do a thing, because the instruction can focus the jury only on the proper use. *See State v. Andersen*, 900 N.W.2d 438, 441–42 (Minn. App. 2017). But in this case, there is no proper use because the evidence was not properly admitted for *any* purpose. By instructing the jurors as it did, reminding them that they “have heard evidence of alleged conduct by the defendant on one or more separate occasions”

and then telling them that the purpose of the evidence was to “demonstrat[e] the nature and extent of the relationship between the defendant and [April] and her daughter in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the Complaint,” the district court inadvertently highlighted the evidence that the jurors should not have considered for any purpose. The only accurately limiting instruction in this case would have been a directive to disregard the evidence altogether. The cautionary instruction was self-defeating.

We have considered the harmless-error factors along with the parties’ related arguments. Notwithstanding the state’s very strong factual case against Domino, we believe justice requires a new trial. Because we believe that a reasonable possibility exists that the wrongly admitted evidence significantly affected the verdict, we reverse the conviction. Given our holding, we need not address Domino’s alternative argument that the prosecutor engaged in reversible misconduct.

Reversed and remanded.