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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1763**

State of Minnesota,
Respondent,

vs.

Johnny Aaron Miller,
Appellant.

**Filed September 10, 2012
Affirmed
Chutich, Judge**

Hennepin County District Court
File No. 27-CR-11-11101

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Chutich, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

On appeal from his conviction of first-degree burglary, appellant Johnny Aaron Miller argues that the district court erred by admitting relationship evidence under Minn.

Stat. § 634.20 (2010). Because the district court properly admitted the evidence, we affirm.

FACTS

Miller and A.M. had an on-again, off-again relationship for over seven years. A few days before April 12, 2011, A.M. and Miller broke up and A.M. kicked him out of her house. On April 12, around 2:30 a.m., A.M. was asleep on her living room couch when she heard pounding on the door. She went out onto her balcony and saw Miller pounding on the door. A.M. told Miller that she was not going to allow him in the house and returned to the couch. Miller entered the house through a lower-level door, went to the living room, and hit A.M. many times in the face. A.M. fell to the ground and Miller hit her in the face again as she crawled backwards out of the house. Once she was outside, Miller ran at A.M. as if he intended to punch her, but then got into a truck and left.

A.M. reported the attack to the police the following morning. Miller was charged with one count of burglary in the first degree in violation of Minn. Stat. § 609.582, subd. 1(c) (2010) (stating that “[w]hoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building” and “assaults a person within the building” is guilty of first-degree burglary).

At Miller’s jury trial, A.M. testified about the events underlying the charge, as well as other instances of emotional and physical abuse during their relationship. A.M. testified that Miller would “do a lot of intimidating, choking, slapping,” that she suffered “bruises and stuff like that,” and that Miller had threatened to kill her and bring her

children to her grave site. A.M. further testified that she had called the police on two other occasions; once because Miller would not leave her home, and once because Miller hit her in the face.

Miller did not testify. He presented an alibi witness who testified that he was at her house that evening. The jury found Miller guilty of first-degree burglary, and he was sentenced to 98 months in prison. This appeal followed.

D E C I S I O N

Miller contends that the district court abused its discretion by permitting A.M. to testify about her relationship with Miller and prior abusive incidents. Generally, appellate courts review the district court's decision to admit relationship evidence for an abuse of discretion. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). Miller made no objection at trial, however; therefore, we review the district court's decision for plain error. *See State v. Kuhlmann*, 806 N.W.2d 844, 852 (Minn. 2011) ("The plain error analysis allows an appellate court to consider an unobjected-to error that affects a criminal defendant's substantial rights.").

"Under plain error analysis, we must determine whether there was error, that was plain, and that affected the defendant's substantial rights. If each of these prongs is met, we will address the error only if it seriously affects the fairness and integrity of the judicial proceedings." *Id.* at 852–53 (citation omitted). An error is plain if it is "clear" or "obvious." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

The district court may admit evidence of similar conduct by a defendant against an alleged victim of domestic abuse unless the probative value of the evidence is

“substantially outweighed by the danger of unfair prejudice” to the defendant. Minn. Stat. § 634.20. Such relationship evidence is offered to “illuminate the history of the relationship” by putting the charged offense in the context of the relationship between the accused and the alleged victim. *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004).

Miller asserts that the relationship evidence admitted here was unduly prejudicial because it was “detailed, inflammatory, explicit, and needlessly cumulative.” The supreme court has held, however, that “[w]hen 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 (Minn. 2006) (quotation omitted).

The supreme court has also recognized that relationship evidence is admissible to establish the history of the relationship because that history provides a context in which the jury can “better judge the credibility of the principals in the relationship.” *McCoy*, 682 N.W.2d at 161. Here, the relationship evidence was clearly probative of the history of A.M. and Miller’s relationship. The evidence was particularly relevant because, while physical evidence confirmed A.M.’s facial injury, the case turned mainly on the relative credibility of A.M. and Miller.

Additionally, the district court minimized any potential prejudice by giving the jury a cautionary instruction immediately before the evidence was offered and with the final jury instructions. The district court informed the jury that the evidence was only offered for the limited purpose of assisting in determining whether Miller committed the

acts with which he was charged, and that the jury was not to convict on the basis of the prior occurrences. *See State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (concluding that the district court’s limiting instruction regarding the relationship evidence lessened the likelihood of the jury according undue weight to the evidence), *review denied* (Minn. Oct. 29, 2008); *see also State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005) (“It is presumed that the jury follows the court’s instructions.”).

Thus, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, and the district court properly admitted the relationship evidence.

Affirmed.