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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1136**

State of Minnesota,
Respondent,

vs.

Daniel John Stehr,
Appellant.

**Filed May 13, 2013
Affirmed
Larkin, Judge**

Olmsted County District Court
File No. 55-CR-10-6759

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County
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David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his convictions of stalking, terroristic threats, and child endangerment, arguing that the district court erred by admitting relationship evidence under Minn. Stat. § 634.20 (2010). We affirm.

FACTS

Respondent State of Minnesota charged appellant Daniel John Stehr with stalking, terroristic threats, and child endangerment. The complaint alleged that on September 8, 2010, Stehr called his estranged wife, A.S., and asked to see their two children before he went to work. When A.S. brought the children to Stehr's residence, Stehr took them into the house. A.S. followed them inside and observed Stehr sitting on the couch with both children. Stehr told the children that he was going to kill himself. Both children were crying, and A.S. told Stehr to stop scaring them. The older child ran to A.S., and she held the child in her arms. While holding the younger child, Stehr stood up and grabbed a handgun from the back of his waist. He held the gun to his temple and threatened to shoot himself. After A.S. yelled at him to stop, Stehr walked toward a bedroom and pointed the gun at A.S., who still had her child in her arms. Eventually, Stehr let go of the younger child. A.S. left the residence with both children and called the police.

Prior to trial, the state filed notice of intent to offer evidence of prior similar conduct under Minn. Stat. § 634.20. The state intended to present testimony from A.S. that, on previous occasions, Stehr held her down and punched the floor next to her head, pushed her against a wall and punched the wall next to her head, grabbed her arm and her

jaw, and verbally abused her. The state also intended to play a recording of Stehr's telephonic threat to kill A.S. Lastly, the state intended to present the testimony of a neighbor that six to eight weeks before the alleged offense, she heard Stehr yelling at A.S. for 30 minutes, during which he said "shut up" and called her a "b-tch."

At a pretrial hearing, Stehr argued, among other things, that the probative value of the state's proffered similar-conduct evidence, colloquially known as "relationship evidence," was substantially outweighed by the danger of unfair prejudice. The district court ruled that the evidence was admissible, finding

[t]hat the evidence is of similar conduct and is very relevant to illuminate the nature of the relationship between [Stehr] and his estranged wife. I do believe that the state has limited the introduction of the evidence so as not to be cumulative and it clearly would not be confusing. I think that the probative value clearly outweighs any prejudicial effect. Unfortunately, the evidence itself is going to be difficult to listen to. It does illuminate the relationship and does demonstrate the threats of violence toward [A.S.].

At trial, the state presented some but not all of the relationship evidence. A.S. testified that Stehr had been verbally abusive since the beginning of their marriage and that his abuse became physical over time. She testified that Stehr would grab her arm, put his hand around her neck, tower over her, and call her derogatory names such as "idiot," "stupid," and "b-tch." A.S. described an incident during which Stehr "had been upset about something and had kind of towered over [her] until [she] was on the floor and then had kind of went over [her] and punched the floor next to [her] head and hurt his hand pretty bad." The state then played the recorded telephone conversation that

included Stehr's threat to kill A.S. A.S. testified that Stehr threatened to kill her "once in a while" and that she had become "kind of numb to it" because it happened so often.

As to the charged incident, A.S. testified that she went to Stehr's residence with their two children. After threatening suicide, Stehr—while holding one of the children—"stood up and . . . reached behind his back and pulled out his gun and . . . point[ed] it at his temple." A.S. was holding the other child. Stehr repeatedly told A.S. to leave, but A.S. refused to leave without both children. A.S. testified that "at one point, going back and forth like that . . . he pointed [the gun] at me."

The jury convicted Stehr of all three offenses. The district court sentenced Stehr to 36 months in prison for harassment and imposed a concurrent 365-day sentence for child endangerment. Stehr appeals his convictions.

D E C I S I O N

Stehr claims that the district court erred by admitting relationship evidence under Minn. Stat. § 634.20. We review the district court's evidentiary ruling for an abuse of discretion. *See State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010).

Minn. Stat. § 634.20 provides that

[e]vidence of similar conduct by the accused against the victim of domestic abuse, or against other family or household members, is admissible 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. "Similar conduct" includes, but is not limited to, evidence of domestic abuse. . . . "Domestic abuse" and "family or household members" have the meanings given under section 518B.01, subdivision 2.

Evidence of prior domestic abuse by the accused against 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.” *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004).

Relationship evidence is treated differently than other “collateral” evidence, partly because “[d]omestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate over time, and it is often underreported.” *Id.* at 161. Thus, the stringent procedural requirements of Minn. R. Evid. 404(b) do not apply to relationship evidence admitted under section 634.20. *State v. Meyer*, 749 N.W.2d 844, 849 (Minn. App. 2008). Section 634.20 “specifically provides for the admission of evidence of ‘similar conduct’ by the accused unless it fails to meet a balancing test that considers whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice.” *McCoy*, 682 N.W.2d at 159. For purposes of section 634.20, unfair prejudice “is not merely damaging evidence, [or] 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).

Stehr offers several arguments in support of reversal. None is persuasive. Stehr argues that “what little probative value, if any, the [relationship] evidence had was substantially outweighed by the danger of unfair prejudice.” With regard to the probative value, Stehr argues that “the challenged evidence did not assist the jury in judging the

credibility of the principals in the relationship.” But Stehr was a principal in the relationship, and his testimony that he never pointed the gun at himself or anyone else in the house on the day of the incident conflicted with A.S.’s testimony. Thus, the jury had to decide whether to believe A.S. or Stehr. The evidence regarding Stehr’s prior abuse and threats was probative on that issue. *See McCoy*, 682 N.W.2d at 161 (“The district court’s ruling allowing the admission of evidence of respondent’s alleged prior assault of his wife allowed the state to present evidence that, if believed by the jury, could have assisted the jury by providing a context with which it could better judge the credibility of the principals in the relationship.”).

Stehr also argues that “[t]he jury knew that the Stehrs’ relationship was strained because [A.S.] testified that she and the kids had moved in with her parents.” Stehr therefore argues that “without the challenged evidence, the state already painted a complete picture for the jury of [the] nature of the relationship between the Stehrs.” We disagree that the picture was complete without the section 634.20 evidence. The purpose of section 634.20 is not to show that a relationship is merely strained, but that the relationship involved “similar conduct by the accused against the victim of domestic abuse.” Minn. Stat. § 634.20. Without the evidence of Stehr’s prior domestic abuse, the jury would not have understood that the relationship included a history of domestic abuse. Such evidence is allowed under section 634.20. *See Bell*, 719 N.W.2d at 641 (“There is no question here that both the November 17 and March 28 OFP violations were probative of a material fact, namely, the history of D.N. and Bell’s relationship.”).

With regard to unfair prejudice, Stehr argues that the relationship evidence “reflected primarily on his bad character” and “allowed the jury to infer that if he had engaged in such conduct in the past, he also must have committed the charged crimes or, at the very least, deserved punishment because of his prior conduct.” But the district court instructed the jury that the evidence “is not to be used as proof of the character of the defendant or that the defendant acted in conformity with such character.” The district court further instructed that “[t]he defendant is not being tried for and may not be convicted of any offenses other than the charged offenses.” The district court’s cautionary instruction mitigated any potential for unfair prejudice, and we presume the jury followed the instruction. *See State v. Courtney*, 696 N.W.2d 73, 84 (Minn. 2005) (“The jury is presumed to have followed the instruction.”).

In conclusion, we discern no error. The record shows that the district court carefully considered the admissibility of the state’s proffered relationship evidence under section 634.20 and did not abuse its discretion by admitting the evidence. We therefore affirm.

Affirmed.