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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0901**

State of Minnesota,
Respondent,

vs.

Ryan Daniel Yollen,
Appellant.

**Filed March 20, 2017
Affirmed
Rodenberg, Judge**

Carlton County District Court
File No. 09-CR-15-888

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

Thomas Pertler, Carlton County Attorney, Nicole L. Ketola, Assistant County Attorney,
Carlton, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and
Toussaint, Judge.*

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant challenges his misdemeanor domestic assault conviction, arguing that the district court abused its discretion by admitting as relationship evidence an unredacted 911 call containing allegations of a prior domestic-conduct incident. He argues that the danger of issue confusion substantially outweighed the evidence's probative value and had a substantial effect on the verdict. We affirm.

FACTS

On April 29, 2015, appellant Ryan Daniel Yollen struck his wife, C.Y., during an argument. C.Y. called 911 to report the assault. She told the 911 operator that appellant had punched her in the back of the head and threatened to kill her. She said that this was the second time in three days that appellant had attacked her and that the earlier assault involved appellant strangling her while she screamed for help.

Officers responded to the call, and C.Y. reported to the officers that appellant had struck her in the back of the neck with a closed fist and pushed her on the couch when she tried to call 911. C.Y. again reported that appellant had strangled her a few days earlier. Appellant was arrested and charged with misdemeanor domestic assault and gross misdemeanor interference with an emergency call.

Before trial, appellant challenged the admissibility of portions of the recorded 911 call because it contained evidence of other bad acts. The district court inquired into the substance of the recording, and appellant's counsel explained that the recording contained C.Y.'s statements that appellant had strangled her two days earlier. Although appellant

argued to the district court that the recording contained *Spreigl* evidence, the district court analyzed the recording under Minn. Stat. § 634.20 (2014) as relationship evidence. It admitted the challenged portion of the recording on this basis.

Before the unredacted recording was played to the jury during the trial testimony of the first witness, the 911 supervisor, the district court gave a cautionary instruction. It informed the jury that the state would introduce evidence of appellant's conduct from an incident that took place on a date other than April 29, 2015. The jury was instructed that the evidence was being admitted for the limited purpose of demonstrating the nature and extent of the relationship between appellant and C.Y., in order to assist the jury in determining whether appellant committed the crime with which he was charged. The jury was further instructed that it was not to convict appellant on the basis of the other incident, because to do so would be unjust.

C.Y., who by the time of trial wanted the charges against appellant dismissed, was subpoenaed by the state. She testified that she had argued with appellant on April 29, 2015, but that she did not remember much about it. She testified that appellant hit her on April 29, but she did not know if it was with a closed fist or an open hand. The officer who took C.Y.'s statement testified about C.Y.'s April 29 statements concerning the assault and the prior incident. The district court gave an additional cautionary instruction after the officer's testimony about the prior incident. A third cautionary instruction about the prior conduct was included with the final jury instructions.

Shortly after deliberations began, the jury requested to again listen to the 911 recording. The recording was replayed for the jury. The jury found appellant guilty of the domestic-assault charge and not guilty of interfering with an emergency call.

This appeal followed.

DECISION

“Evidence of domestic conduct by the accused against the victim of domestic conduct . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury” Minn. Stat. § 634.20. Section 634.20 was adopted by the Minnesota Supreme Court as a rule of evidence governing the admission of domestic conduct against the alleged victim of domestic abuse. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004); *see also State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015) (expressly extending the application of section 634.20 as a rule of evidence to domestic conduct against family or household members). We review a district court’s decision to admit relationship evidence for abuse of discretion. *State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010).

Appellant argues that there must be some proof that the prior conduct actually occurred before it is admitted and that we should use this occasion to define the degree of proof that must be met by the proponent of prior domestic conduct before the evidence is admitted under section 634.20. Unlike evidence admitted under rule 404(b) of the Minnesota Rules of Evidence, section 634.20 does not require that evidence of prior domestic conduct be proved by clear and convincing evidence before it may be admitted. *McCoy*, 682 N.W.2d at 161. The Minnesota Supreme Court has stated that domestic

conduct in domestic abuse trials “is relevant and admissible unless it should be excluded” for failing to meet the balancing test contained within section 634.20. *Id.* at 159. The balancing test is the standard for admitting evidence of domestic conduct. Evidence of domestic conduct is admissible “unless the probative value is substantially outweighed.” Minn. Stat. § 634.20. The degree of proof of the conduct in question is that level of probative value. It is not for us to adopt a different standard for admissibility. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (“[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.”), *review denied* (Minn. Dec. 18, 1987).

Appellant also argues that the evidence had minimal probative value because it did not illuminate the ten-year history of the relationship between appellant and C.Y., and at most gave context to a difficult three-day period. He argues that the minimal probative value of the evidence was substantially outweighed by the danger of confusing the issue because of the close temporal relationship between the charged crime and the prior incident. We disagree.

Evidence of prior domestic violence committed by the same defendant against the same victim has an inherent probative value. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). “Evidence that helps to establish the relationship between the victim and the defendant or which places the event in context bolsters its probative value.” *State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Oct. 29, 2008); *see also McCoy*, 682 N.W.2d at 161 (holding that the district court did not abuse its discretion in allowing “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”). Section 634.20 contains no “temporal restriction.” *Lindsey*, 755 N.W.2d at 756 (permitting evidence of conduct that occurred after the charged offense).

The evidence that appellant had assaulted C.Y. several days before the charged offense, and that they argued about the prior assault, puts the charged offense into context and was probative of the recent relationship history. The unredacted 911 call had significant probative value because it permitted the jury an opportunity to judge the credibility of C.Y. and weigh her trial testimony, which contradicted both her statements to the 911 operator and to the responding officer. Any danger of issue confusion was mitigated by the district court’s three cautionary instructions concerning the purpose of the prior incident evidence. “We presume that jurors follow a judge’s instructions.” *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). The district court acted within its discretion in admitting the evidence of the prior incident of domestic conduct because the probative value of the evidence was not substantially outweighed by the danger of confusion of the issue.

Affirmed.