STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1672

State of Minnesota,
Respondent,

vs.

Abraham Alexander Houle,
Appellant.

Filed September 5, 2017
Affirmed
Rodenberg, Judge

Ramsey County District Court
File No. 62-CR-15-9169

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Kirk, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

Appellant Abraham Houle was convicted of aggravated stalking, violating an order for protection (OFP), and violating domestic abuse no-contact orders (DANCOs). He

argues on appeal that the district court committed plain error by admitting at trial relationship evidence under Minn. Stat. § 634.20 (2014) and Minn. R. Evid. 404(b). We affirm.

FACTS

Appellant was charged with aggravated stalking, two counts of violating an OFP, and four counts of violating DANCOs, after he cut in front of a vehicle driven by his ex-girlfriend, S.K., causing a collision. S.K. informed police that appellant had also recently asked about S.K. and "investigation revealed" that appellant was outside of her home on Halloween. At the time of these incidents, an OFP and two DANCOs prohibited appellant from having contact with S.K., and prohibited him from being at either her residence or her workplace.

Before trial, the state filed a notice of intent to introduce evidence of seven other incidents under Minn. Stat. § 634.20 and Minn. R. Evid. 404(b). The seven incidents all involved behavior directed at S.K., including physical and fear-based assaults, text messages and phone calls, and unwelcome visits to S.K.'s home, some of which occurred after the OFP and DANCOs were issued. Appellant objected to the introduction of evidence concerning an August 2014 assault at S.K.'s workplace, arguing that it was prejudicial, cumulative, and had the potential to confuse the jury. The district court ruled that S.K. could testify about the incident under Minn. Stat. § 634.20 because, "[i]t is clearly part of the history of the relationship. It's the impetus for the first order for protection."

Appellant did not object to the admission of the other six incidents from 2014. The district court admitted the seven incidents in evidence under Minn. Stat. § 634.20 as

evidence of the relationship between S.K. and appellant, and under Minn. R. Evid. 404(b) because the incidents showed a common scheme, plan, and lack of mistake.

At trial, S.K. testified about the seven incidents introduced as relationship evidence. The district court provided a limiting instruction to the jury before testimony was presented concerning each incident. The district court also provided a limiting instruction during its final charge to the jury. The jury returned guilty verdicts on all counts.

This appeal followed.

D E C I S I O N

Appellant argues that the seven incidents from 2014 should not have been admitted under Minn. Stat. § 634.20 because the evidence was cumulative, it was unnecessary, and any probative value of the evidence was substantially outweighed by the danger of unfair prejudice. He also argues that the evidence was not admissible under Minn. R. Evid. 404(b).

Evidentiary rulings generally rest within the district court's discretion, and we will not reverse a district court's decision on the admission of evidence absent an abuse of that discretion. *State v. Washington-Davis*, 867 N.W.2d 222, 237 (Minn. App. 2015), *aff'd*, 881 N.W.2d 531 (Minn. 2016). If the district court erroneously admits evidence, an appellate court will nonetheless affirm unless the appellant establishes that the admission was prejudicial. *State v. Welle*, 870 N.W.2d 360, 366 (Minn. 2015). An appellant establishes prejudice if "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016) (quotation omitted).

But where, as with most of the challenged evidence here, a defendant has not objected to the evidence at the district court, we review only for plain error. *State v. Word*, 755 N.W.2d 776, 781 (Minn. App. 2008). We consider if there was an error, if that error was plain or obvious, and if the error affected the appellant's substantial rights. *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007). "[A]n error affects a defendant's substantial rights if there is a reasonable likelihood that the error had a 'significant effect' on the verdict." *State v. Finch*, 865 N.W.2d 696, 703 (Minn. 2015) (quoting *State v. Sontoya*, 788 N.W.2d 868, 873 (Minn. 2010)). If all three elements of plain-error review are satisfied, a reviewing court may decide whether to address the error to ensure "fairness and the integrity of the judicial proceedings." *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quotation omitted).

"Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). But such evidence may be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* The evidence is admissible only if

> (1) the prosecutor gives notice of its intent to admit the evidence . . . ; (2) the prosecutor clearly indicates what the evidence will be offered to prove; (3) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence; (4) the evidence is relevant to the prosecutor's case; and (5) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Id.

Within the class of evidence covered by Minn. R. Evid. 404(b) is a distinct kind of other-act evidence, known as relationship evidence. *State v. Rossberg*, 851 N.W.2d 609, 615 (Minn. 2014). Relationship evidence is "any evidence offered to illuminate the relationship between the accused and the alleged victim." *State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006). Relationship evidence is admissible to show the "strained relationship between the accused and the victim," and may be relevant to prove motive and intent. *State v. Bauer*, 598 N.W.2d 352, 364 (Minn. 1999) (quotation omitted). The Minnesota Supreme Court has recognized the "inherent value of evidence of past acts of violence committed by the defendant against the same victim." *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999).

A distinct type of relationship evidence, evidence of domestic conduct against a victim is admissible under Minn. Stat. § 634.20 in order "to illuminate the relationship between the defendant and the alleged victim and to put the alleged crime in the context of that relationship." Minn. Stat. § 634.20; *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010) (citing *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004)), *review denied* (Minn. Nov. 16, 2010); *Word*, 755 N.W.2d at 784. Such evidence may aid the jury in considering "the credibility of the principals in the relationship." *McCoy*, 682 N.W.2d at 161; *see State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (noting that relationship evidence has "significant probative value in assisting the jury to judge witness credibility"), *review denied* (Minn. Oct. 29, 2008). Under section 634.20, "domestic conduct" includes, but is not limited to, domestic abuse, violation of an OFP or harassment restraining order, stalking, or obscene or harassing telephone calls. Minn. Stat. § 634.20 (referencing statutes

criminalizing stalking, Minn. Stat. § 609.749 (2014), obscene or harassing telephone calls, Minn. Stat. § 609.79, subd. 1 (2014), violation of a harassment restraining order, Minn. Stat. § 609.748, subd. 6 (2014), and violation of an OFP, Minn. Stat. § 518B.01, subd. 14 (2014)).

Section 634.20 does not entail the same procedural requirements as Minn. R. Evid. 404(b). *Word*, 755 N.W.2d at 784. Evidence 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, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. Stat. § 634.20.

Appellant argues that the evidence of the seven incidents admitted under section 634.20 should have been excluded because the evidence was unnecessary to the state's case, cumulative, and highly prejudicial.

As an initial matter, the district court was not required to separately analyze the state's need for the evidence apart from the analysis of probative value versus prejudicial effect. *Bell*, 719 N.W.2d at 639. The state charged appellant with aggravated stalking under Minn. Stat. § 609.749, subd. 4(b) (2014). The state was required to prove that appellant engaged in conduct which he knew or had reason to know would cause S.K. to feel frightened or intimidated, and which did cause S.K. to feel frightened or intimidated. *Id.*, subd. 1 (2014). Contrary to appellant's assertion that the OFP and DANCOs themselves were instructive enough, evidence of appellant's conduct tended to prove that S.K. was fearful of appellant. The documents would not establish that S.K. felt intimidated or frightened by appellant's conduct. *See State v. Hormann*, 805 N.W.2d 883, 891 (Minn.

App. 2011) (concluding, in stalking case, that relationship evidence placed the relationship in context where "the state needed to establish that appellant had given her reason to fear [his] repeated confrontational and intimidating conduct"), *review denied* (Minn. Jan. 17, 2012). The seven incidents placed the relationship between S.K. and appellant in context and aided the jury in considering the credibility of the witnesses, especially considering appellant's denial that he knew the identity of the other driver involved in the crash. The evidence was relevant and had significant probative value.

Appellant argues that the introduction of seven incidents was unnecessarily cumulative. Rulings on "whether evidence is improperly cumulative[] are committed to the sound discretion of the district court." *State v. Schulz*, 691 N.W.2d 474, 479 (Minn. 2005). A district court should exclude other-act evidence if "it is merely cumulative and a subterfuge for impugning a defendant's character." *State v. Washington*, 693 N.W.2d 195, 203 (Minn. 2005) (quotation omitted). The amount of other-act evidence should be limited if it is unnecessary to the prosecution, risks fixating the jury on prior incidents, or if it treads the line between its stated purpose and impugning a defendant's character. *Id.* As discussed above, the incidents were relevant and important to the state's case. The district court acted within its discretion in implicitly concluding that the probative value of the seven incidents, both in establishing the nature and context of the relationships and in establishing witness credibility, outweighed the danger posed by the introduction of testimony concerning all seven incidents.

Finally, appellant argues that the danger of unfair prejudice substantially outweighed any probative value of the evidence. He argues the relationship evidence

permitted the jury to convict him on the basis of a propensity to commit the crime or because the jury believed he was a bad person. 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 (quotation omitted). Although the evidence was damaging to appellant's case, we cannot say on this record that the risk of unfair prejudice substantially outweighed the high probative value of the evidence. Moreover, that risk was decreased by the limiting instructions appropriately provided by the district court. "A district court's limiting instruction lessens the probability of undue weight being given by the jury to [relationship] evidence." *State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (quotation omitted). We presume that a jury follows the district court's instructions. *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998).

The district court acted within its discretion in admitting the seven incidents as relationship evidence under Minn. Stat. § 634.20. Because the evidence was admissible under section 634.20, we need not separately consider whether the district court should have excluded the incidents under Minn. R. Evid. 404(b). *See State v. Barnslater*, 786 N.W.2d 646, 653 n.3 (Minn. App. 2010) (concluding that an analysis under Minn. R. Evid. 404(b) was unnecessary because the evidence was properly admitted under section 634.20), *review denied* (Minn. Oct. 27, 2010).

Affirmed.