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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1330**

State of Minnesota,
Respondent,

vs.

Donyell Tyrone Roberts,
Appellant

**Filed July 23, 2018
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CR-16-8238

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

John J. Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by admitting relationship evidence. We affirm.

FACTS

On November 20, 2016, P.C. engaged in a telephone conversation with a friend. Appellant Donyell Tyrone Roberts, P.C.'s boyfriend, heard part of the conversation, which led him to yell at P.C. and accuse her of cheating on him. Roberts took P.C.'s phone, looked through it, and threw it across the room. Roberts grabbed P.C., dragged her to the bedroom, and threw her onto the bed. P.C. alleged that Roberts pressed down on her and prevented her from breathing. Roberts also slapped and punched P.C. in the face and on the back of her head. P.C. had redness and swelling on her face and found it difficult to swallow. P.C. escaped and went to her neighbor's apartment where she called the police.

Officer Welters observed apparent "swelling to the left side of [P.C.'s] face." He also observed a cut on the back of P.C.'s neck, "probably a couple inches in length, like a healed cut, a scabbed-over cut." P.C. reported that Roberts strangled her, slapped her, and punched her in the face. P.C. told Officer Welters that she believed that Roberts was going to kill her.

Roberts was charged with terroristic threats, domestic assault by strangulation, and domestic assault. The state gave notice of its intent to introduce relationship evidence pursuant to Minn. Stat. § 634.20 (2016). The state did not identify the specific instances of prior domestic abuse that it intended to introduce. Later, the state filed notice of its intent to offer evidence concerning an incident occurring on August 8, 2015, involving domestic assault by strangulation.

Prior to hearing testimony at Roberts's jury trial, the district court heard argument concerning the admissibility of relationship evidence. The district court ruled that

“evidence of domestic assault by [Roberts] against [P.C.] . . . is admissible[,]” determining that “the probative value substantially outweighs any danger of unfair prejudice.” The state presented evidence concerning two prior instances of domestic abuse. First, P.C. testified that in August 2015, Roberts became angry after learning that P.C. ate his burger and put a gun to her head, telling her that he was going to kill her. P.C.’s neighbor also testified that P.C. had “mentioned to [her] that [Roberts] had put a gun to her head.” A police officer testified that he asked P.C. about “the history of the violence in the relationship” and that “she stated that she had a gun pulled on her about a year ago and that she lives in fear every day.”

Second, P.C. testified that sometime prior to the charged incident, Roberts held a knife to her throat and that as she turned to get out of his grasp, the knife grazed the back of her neck, resulting in a cut. Officer Welters also testified that P.C. told him that Roberts had held a knife to her throat. Officer Welters testified that P.C. also told him that she “spun away and that’s how the . . . injury was sustained to the back of her neck.”

The jury found Roberts guilty of terroristic threats and domestic assault, but not guilty of domestic assault by strangulation. The district court sentenced Roberts to 15 months in prison, stayed for five years, on the terroristic-threats count and 365 days in jail for the domestic-assault count, with 200 days stayed for two years. This appeal followed.

DECISION

Roberts argues that the district court erroneously admitted evidence of prior domestic abuse against P.C. This court reviews the district court’s decision to admit similar-conduct or relationship evidence under Minn. Stat. § 634.20 for an abuse of

discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). The appellant must show that the district court abused its discretion and that the appellant was prejudiced. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). “[A]n appellant who alleges an error in the admission of evidence that does not implicate a constitutional right must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (quotation omitted).

Section 634.20 governs the admissibility of “[e]vidence of domestic conduct by the accused against the victim of domestic conduct[.]” “Domestic conduct includes . . . evidence of domestic abuse.” Minn. Stat. § 634.20 (quotation marks omitted). Relationship evidence “is offered to demonstrate the history of the relationship between the accused and the victim of domestic abuse.” *State v. Meyer*, 749 N.W.2d 844, 848 (Minn. App. 2008). Evidence of similar domestic conduct is admissible under section 634.20 if “(1) it is similar conduct by the accused, (2) it is perpetuated against the victim of domestic abuse or against another family or household member, and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.” *Id.* at 849. “[U]nfair 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.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted).

Relationship evidence is probative if it provides context for the charged offenses within the relationship between the accused and the victim. *See id.* (concluding that relationship evidence was probative because it explained the history of the relationship

between the abuser and the victim); *see also State v. Barnslater*, 786 N.W.2d 646, 652 (Minn. App. 2010) (explaining that relationship evidence was “particularly probative” because it “place[d] the event in context” by “help[ing] to establish the relationship between the victim and the defendant”), *review denied* (Minn. Oct. 27, 2010). Here, the evidence of similar domestic conduct placed the charged offenses in the context of the relationship between P.C. and Roberts. Therefore, the evidence had substantial probative value.

Roberts argues that the relationship evidence was unfairly prejudicial. But evidence is not unfairly prejudicial merely because it is damaging; it must tend to persuade the jury by some illegitimate means. *Bell*, 719 N.W.2d at 641. Here, the relationship evidence contextualized the charged conduct within the history of Roberts’s relationship with P.C. and did not persuade by illegitimate means. The district court did not abuse its discretion by admitting relationship evidence.

In addition, Roberts argues that: (1) the relationship evidence was unnecessarily cumulative; (2) the district court erred by failing to revisit its ruling admitting the relationship evidence when the state presented evidence that Roberts held a knife to P.C.’s neck; (3) the state failed to give notice of its intent to present evidence that Roberts held a knife to P.C.’s neck; and (4) the state misused the relationship evidence during closing argument. Roberts did not specifically raise any of these issues to the district court. Therefore, we review them for plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating that when a defendant fails to object to the admission of evidence, appellate courts review under the plain-error standard); *see also State v. Ramey*, 721

N.W.2d 294, 302 (Minn. 2006) (stating that when a defendant fails to object to alleged prosecutorial misconduct, appellate courts review under a modified plain-error standard). “The plain error standard requires that the [appellant] show: (1) error; (2) that was plain; and (3) that affected substantial rights.” *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). If each prong is met, this court “may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.” *Id.* (quotations omitted).

First, Roberts argues that the relationship evidence was cumulative because the state elicited testimony from several witnesses. However, because Roberts denied striking P.C. and they were the only witnesses to the encounter, bolstering P.C.’s credibility was important to the state’s case. *See McCoy*, 682 N.W.2d at 161 (stating that relationship evidence may be probative if it “assist[s] the jury by providing a context with which it could better judge the credibility of the principals in the relationship”). We conclude that the district court did not err by permitting the state to elicit relationship evidence from multiple witnesses.

Next, Roberts cites no caselaw supporting his argument that the district court should have revisited, sua sponte, its order admitting relationship evidence when the state presented evidence not specifically described in its pretrial notice. In the absence of any caselaw addressing this issue, Roberts has failed to demonstrate error. *See State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008) (stating that an error cannot be “plain” in the absence of binding precedent). Similarly, while Roberts also argues that the state failed to provide notice of its intent to present evidence relating to the knife incident, the state is not required

to give pretrial notice of specific acts of domestic conduct that it intends to admit at trial. *See McCoy*, 682 N.W.2d at 159 (“We have long held that ‘*Spreigl* notice’ is not required as a condition for the admissibility of evidence bearing directly on the history of the relationship existing between the defendant and the victim.”). As the supreme court explained in *McCoy*, a defendant is considered aware that his prior relationship with the victim may be used against him. *Id.* at 159-60.

Finally, Roberts argues that the state invited the jury to misuse the relationship evidence during closing argument. But, again, Roberts cites no caselaw explaining how the prosecutor’s statements during closing argument constituted misconduct. Furthermore, the record demonstrates that the prosecutor urged the jury to use the relationship evidence only to contextualize the charged offenses within the relationship between Roberts and P.C.:

And as the [district court] just instructed you, the history of the abuse, of course, is important, but keep this in mind as well, it is important just to put this relationship into context. To be able to look at the relationship, not in a vacuum, not just from November 20th, 2016, but as a whole and understand, looking at this relationship as a whole, what happened on that day.

The prosecutor used the relationship evidence during closing argument in a permissible manner. We conclude that the district court did not err in any of the ways suggested by Roberts.

Affirmed.