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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1956**

State of Minnesota,
Respondent,

vs.

Joshua Isiah Jones,
Appellant.

**Filed November 26, 2018
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CR-17-2848

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi L. Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his convictions of felony violation of an order for protection (OFP). He argues that the district court abused its discretion by admitting overly

prejudicial and cumulative relationship evidence and that the failure to provide a limiting instruction on the proper use of relationship evidence during final jury instructions was error. We affirm.

FACTS

On July 29, 2013, the district court issued an OFP against appellant Joshua Jones. The OFP prohibited Jones from having contact with his ex-girlfriend, A.S., including contact by “telephone, mail, or electronic mail or messaging [or] through a third party.” The OFP was extended for an additional ten years in 2015.

In March 2017, A.S. received phone calls from a number that she did not recognize. After answering the phone, A.S. recognized the caller as Jones and contacted the police. A few days later, A.S. received another phone call, during which the caller asked her why she called the police. A.S. hung up. After receiving another phone call, A.S. contacted the police. The state charged Jones with two felony counts of domestic abuse (violation of OFP).

At trial, the district court allowed the prosecutor to introduce relationship evidence pursuant to Minn. Stat. § 634.20 (2016) and Minnesota caselaw over Jones’s objection. The jury returned a verdict of guilty on both counts. This appeal follows.

D E C I S I O N

I.

Jones contends that the district court abused its discretion by allowing the state to introduce relationship evidence under Minn. Stat. § 634.20 and Minnesota caselaw. *See State v. Hormann*, 805 N.W.2d 883, 890 (Minn. App. 2011) (“Minnesota caselaw has

established a basis for the introduction of relationship evidence independent of Minn. Stat. § 634.20 . . .”), *review denied* (Minn. Jan. 17, 2012). The evidence included A.S.’s testimony about her relationship with Jones and certified copies of Jones’s six prior convictions, all of which involved A.S.

We review the admission of relationship evidence for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (reviewing admission of relationship evidence under Minn. Stat. § 634.20); *Hormann*, 805 N.W.2d at 888 (reviewing admission of relationship evidence under Minnesota caselaw).

Minn. Stat. § 634.20 governs the admissibility of evidence of domestic conduct.

The statute provides:

Evidence of domestic conduct by the accused against the victim of domestic conduct, 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.

Minn. Stat. § 634.20. Domestic conduct includes evidence of domestic abuse and violation of an OFP. *Id.* Relationship evidence can also be admitted independently of Minn. Stat. § 634.20. *Hormann*, 805 N.W.2d at 890. Evidence offered to “show the strained relationship between the accused and the victim” is especially probative when it contextualizes the charged incident. *Id.* (quotation omitted). Relationship evidence, whether admitted under section 634.20 or caselaw, requires the district court to balance the probative nature of the evidence against the potential for unfair prejudice. Minn. Stat. § 634.20; *Hormann*, 805 N.W.2d at 890.

Jones contends that A.S.'s testimony about their relationship was unfairly prejudicial because her testimony was not limited or tailored by the district court and because it described acts of domestic violence such as "choking," "smothering," and "kicking."

A.S. testified about the history of her relationship with Jones. A.S. described instances of Jones's behavior such as him coming to her house in violation of the OFP, breaking windows, kicking down her door, choking her, putting a pillow over her face, and threatening her over the phone. A.S.'s testimony was limited to the instances of conduct that prompted her to seek orders for protection against Jones or to report his violations of existing orders. Her testimony did not contain graphic detail or focus on any one incident for an extensive period of time.

Evidence is unfairly prejudicial when it persuades by illegitimate means and gives one party an unfair advantage. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). The district court acknowledged the potential for unfair prejudice, but stated that it would instruct the jury not to use the evidence in an impermissible way. The district court gave the jury a limiting instruction before A.S.'s testimony and before the admission of Jones's prior convictions, but did not include a limiting instruction in the final jury instructions. Jurors are presumed to have followed instructions. *State v. Gatson*, 801 N.W.2d 134, 151 (Minn. 2011).

The supreme court has held that relationship evidence is admissible when it helps to contextualize the relationship between the accused and the victim. *McCoy*, 682 N.W.2d at 159. Relationship evidence has "further probative value when it serves to place the

incident . . . into proper context.” *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009) (quotation omitted). Allowing the relationship evidence here was probative because, as the district court determined, it provided the jury with context of the relationship between Jones and A.S. The history of their relationship helped the jury understand why A.S. was upset by the phone calls in 2017 and assisted the jury in assessing the credibility of her testimony that the caller was Jones. Because the background evidence better enabled the jury to properly evaluate how and why the phone calls made A.S. fearful, the district court properly exercised its discretion by admitting A.S.’s testimony concerning the relationship.

Jones also contends that the admission of certified copies of his six prior domestic-conduct convictions was unfairly prejudicial and cumulative. While he concedes that admission of two of the convictions was necessary for the state to prove an element of the offense for which he was being tried, Jones asserts that the admission of the four additional prior convictions did not provide necessary context. We disagree. The supreme court has “recognized the inherent value of evidence of past acts of violence committed by the same defendant against the same victim.” *Bell*, 719 N.W.2d at 641 (quotation omitted). In addition, the supreme court has held that relationship evidence that assists the jury in understanding the relationship between the parties and making credibility determinations is relevant, probative, and admissible. *Id.*; *State v. Barnslater*, 786 N.W.2d 646, 652 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010). Jones could have stipulated to the prior-convictions element of the offenses but chose not to. The admitted prior convictions were all the result of offenses committed against A.S. and did serve to contextualize the relationship between her and Jones. Accordingly, we conclude that the

district court acted within its discretion by admitting the evidence of Jones's prior convictions.

II.

Jones argues that the district court committed reversible plain error by failing to include a third limiting instruction in the final jury instructions. He did not object at trial. For this court to review a claimed error that was not objected to, there must be “(1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (footnote omitted).

In *State v. Meldrum*, we stated that when relationship evidence is admitted, “[a] cautionary instruction is strongly preferred.” 724 N.W.2d 15, 22 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007). We noted that “[u]pon the admittance of relationship evidence . . . the district court should provide a cautionary instruction when the evidence is admitted, and again during its final charge to the jury.” *Id.* at 21. But we further stated that, while a cautionary instruction concerning the proper use of relationship evidence is preferred, the absence of such an instruction does not *automatically* constitute plain error. *Id.* at 22.

Here, the district court gave the following instruction prior to A.S.'s testimony, consistent with 10 *Minnesota Practice*, CRIMJIG 2.07 (2017):

[T]he state is about to introduce evidence of conduct by Mr. Jones. The evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between

Mr. Jones and [A.S.] . . . [i]n order to assist you in determining whether or not the defendant committed the acts that he is being charged with in this case[.] [T]he defendant is not being tried for and may not be convicted of any behavior other than the offenses that he is charged with in this case. To do so might result in an unjust double punishment.

When certified copies of Jones’s convictions were offered through the officer, the district court gave the jury a second cautionary instruction, which was substantially the same as the first.

The supreme court has held that there was no plain error when the prosecutor outlined permissible uses of relationship evidence, even when the district court did not provide any cautionary instructions. *State v. Bauer*, 598 N.W.2d 352, 366 (Minn. 1999). In *Bauer*, the supreme court noted that, “[i]mportantly, at no time did the state suggest that the relationship evidence be used for an improper purpose.” *Id.* at 365. Rather, the state “prefaced its summary of the relationship evidence” by pointing out a permissible use. *Id.* at 365-66.

Here, in closing argument, the prosecutor similarly reminded the jury of the proper, limited use of the relationship evidence, stating:

You heard a lot of evidence about the history, and as the Court told you, you are not to consider that as it relates to the defendant’s guilt in this case because it’s improper for you to say, listen, he’s done all this bad stuff before, he must have done this now, right? But these types of cases that come up where there’s a court order for protection, there’s a relationship involved, there’s context. And so that information was given to you so you could understand how they got here, how did this order get put in place, why was it put in place, why did a judge, after hearing evidence, determine that [A.S.] was in need of protection from the defendant, and why was he banned from having . . . any contact with her.

The district court gave the jury two clear cautionary instructions during trial, which the jurors are presumed to have followed. And, as in *Bauer*, the prosecutor reminded the jury of the proper use of the admitted relationship evidence during closing argument. Because we conclude that the district court did not err by failing to give a third cautionary instruction during its final jury instructions, we need not determine whether the error was plain or whether it affected substantial rights. *State v. Ihle*, 640 N.W.2d 910, 919 (Minn. 2002). We discern no error.

Affirmed.