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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2015**

State of Minnesota,
Respondent,

vs.

Christian Anthony Schutz,
Appellant.

**Filed November 19, 2018
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-17-2652

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, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his felony conviction for violation of a domestic abuse order for protection (OFP) arguing that he should be entitled to a new trial because the district court abused its discretion when it admitted relationship evidence and that it committed plain error when it failed to provide the jury with a specific unanimity instruction. Because we see no error, we affirm.

FACTS

Appellant Christian Schutz and the victim A.O. have two children and were in a relationship until 2009. After the relationship ended, A.O. obtained an OFP that prevented appellant from having contact with her. The OFP was amended to include language that appellant needed to provide 24-hours' notice if he planned to attend a child's sporting, school, or other event.

In April 2017, appellant attended an art show at a restaurant that was put on by Great River School. Both the children went to Great River School, where A.O. was also a teacher. A.O. and her two children also went to the art show. At the art show, A.O. saw appellant and told him he should not be there. Appellant did not immediately leave. A.O. then notified a security guard that she had an OFP against appellant and that he should not be at the event. The security guard told appellant he needed to leave. Appellant, again, did not immediately leave.

Appellant was subsequently charged with one count of violating the OFP and the case was tried to a jury. The state argued that appellant violated the order by not providing

24-hours' notice before attending a child's event and that he was not allowed to have contact with A.O. and should have left when he saw her. Appellant conceded there was a valid OFP in place against him, he did not provide notice that he would be at the show, and he did not leave immediately. The state also introduced relationship evidence.

The relationship evidence included five different events. The state introduced evidence that in March 2013, appellant snuck into A.O.'s house, A.O. texted appellant to leave and notified the police, and that he was found hiding behind a dresser in her room. Appellant also sent vulgar text messages to A.O. on this date.

The state also introduced evidence that appellant attended a child's soccer game in July 2013. The police were called but appellant left before they arrived. The county attorney's office concluded that appellant's conduct at the soccer game was not chargeable. The state further introduced evidence that appellant violated the OFP and a no-contact order on different dates and engaged in threatening conduct on Facebook.

The jury found appellant guilty of violating the OFP and returned a unanimous guilty verdict. The verdict form did not have a specific unanimity instruction on what provision of the OFP appellant violated. After the guilty verdict, appellant filed a notice of appeal and asks this court to grant him a new trial because the district court erred in allowing the prosecution to present relationship evidence. He also argues that the district court should have provided a specific unanimity instruction on what provision of the OFP he violated.

DECISION

I. Relationship Evidence.

Appellant argues that the district court abused its discretion when it allowed A.O. to testify about his prior conduct as relationship evidence because it was not relevant to any issue at trial. Appellant also argues that the relationship evidence's probative value was substantially outweighed by its prejudicial effect.

We review the district court's decision to admit evidence of similar conduct by the defendant against an alleged domestic-abuse victim under Minn. Stat. § 634.20 (2016) for an abuse of discretion. *State v. Meyer*, 749 N.W.2d 844, 848 (Minn. App. 2008). Appellant has the burden to establish that the district court abused its discretion and that appellant was prejudiced. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Section 634.20 governs the admission of relationship evidence. The standard for admitting prior relationship evidence in cases of domestic abuse differs from bad-act or *Spreigl* evidence. *Meyer*, 749 N.W.2d at 848. Section 634.20 is an exception to the general rule regarding prior bad act evidence and may be offered to “demonstrate the history of the relationship between the accused and the victim of domestic abuse.” *Id.* Under Minn. Stat. § 634.20,

[e]vidence 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.

State v. Fraga, 864 N.W.2d 615, 626 (Minn. 2015). “Domestic conduct includes, but is not limited to, evidence of domestic abuse [or a] violation of an order for protection under section 518.B.01.” Minn. Stat. § 634.20 (quotation omitted).

Appellant does not dispute that the evidence was not domestic conduct. Instead, appellant argues that the state abused its discretion because it did not establish that the relationship evidence was relevant. However, section 634.20 does not require the district court to independently consider the state’s need for such evidence. *State v. Bell*, 719 N.W.2d 635, 639 (Minn. 2006). This is because when courts consider the admission of relationship evidence, the determination “is naturally considered as part of the assessment of [its] probative value versus [its] prejudicial effect.” *Meyer*, 749 N.W.2d at 849; see *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010) (“[r]elationship evidence is relevant because it ‘illuminates the history of the relationship’”).

Because the purpose of the evidence admitted under section 634.20 is to illuminate the history of the relationship, the district court did not need to find it probative of a specifically contested issue.

Appellant argues that even if the relationship evidence was properly considered, the district court should not have admitted the evidence because its probative value was substantially outweighed by the danger of unfair prejudice. See Minn. Stat. § 634.20. “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. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998). “[U]nfair prejudice is not merely damaging evidence, nor is it severely damaging evidence.” *Meyer*, 749 N.W.2d at 849 (quotation omitted). Unfair

prejudice means that the evidence “persuades by illegitimate means and gives one party an unfair advantage.” *Id.*

Appellant argues that the evidence caused unfair prejudice because it allowed the prosecution to convince the jury that he was guilty based on his alleged prior bad character. To support this argument appellant states that the prosecution discussed five distinct events constituting relationship evidence at great length in both opening and closing arguments. However, evidence that is severely damaging does not mean it results in unfair prejudice. *Id.*

In addition, both the prosecutor and the judge cautioned the jury on multiple occasions that the relationship evidence was not to be used as evidence of appellant’s guilt.¹ For example, the prosecutor told the jury that they should not “find him guilty because of these past things” but that the events are helpful to “understand the relationship and understand where she would be frightened.” These cautionary instructions lessen the danger of unfair prejudice. *State v. Barnslater*, 786 N.W.2d 646, 653-54 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010); *see State v. Word*, 755 N.W.2d 776, 786 (Minn. App. 2008) (in analyzing this issue, we also consider whether the prosecutor urged the jury to use the relationship evidence in an improper way); *see also Matthews*, 779 N.W.2d at 550 (courts presume that juries follow instructions given by the court).

¹ Appellant argues in his brief that the closing instructions were erroneous and extremely confusing. Appellant does not rely on any authority to show how the jury instructions were erroneous.

Because the prosecutor did not use the evidence to persuade by illegitimate means, appellant has not demonstrated that the evidence was unfairly prejudicial. The district court did not abuse its discretion despite the evidence's damaging impact.²

II. Specific Unanimity Instruction.

Appellant argues that the district court erred when it failed to provide a specific unanimity instruction to the jury because the state introduced evidence that appellant committed multiple acts that violated the OFP. Appellant concedes that he failed to object to the instructions at trial. A defendant's failure to object to instructions before the judge instructs the jury generally constitutes a waiver of the right to appeal. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Nonetheless, we will review the instructions if they amount to plain error affecting substantial rights or were misleading or confusing on fundamental points of law. *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001). Error is prejudicial when there is a reasonable likelihood that the error would have had a significant effect on the jury's verdict. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998).

"Jury verdicts in all criminal cases must be unanimous." *State v. Pendleton*, 725 N.W.2d 717, 730 (Minn. 2007) (citing Minn. R. Crim. P. 26.01, subd. 1(5)). "To achieve that end, a jury must unanimously find that the government has proved each element of the offense." *Id.* at 730-31 (quotation omitted). However, the jury need not unanimously agree

² Appellant's supplemental pro se brief indicates that it was filed in support of the appellant's brief. However, the supplemental pro se brief appears to raise the argument that the district court admitted relationship evidence that was not an "instance of prior domestic conduct." That brief also appears to suggest that the prosecutor used this evidence to persuade by illegitimate means. We have considered and are not persuaded by the arguments raised in appellant's supplemental pro se brief.

on each element's underlying facts so long as the differing factual circumstances show "equivalent blameworthiness or culpability." *Id.* In addition, "the jury need not always decide unanimously which of several possible sets of underlying brute facts make up a particular element, [such as] which of several possible means the defendant used to commit an element of the crime." *State v. Dalbec*, 789 N.W.2d 508, 511 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Dec. 22, 2010).

Here, appellant was charged with one count of violating an OFP. *See* Minn. Stat. § 518B.01, subd. 14(a) (2016). The district court instructed the jury to find appellant guilty if they find that the state proved, beyond a reasonable doubt, that (1) there was an existing order for protection in place, (2) appellant knew of the existing order, (3) appellant violated a term or condition of the order, and (4) appellant's act took place on the alleged date in Ramsey County. Appellant argues that a specific unanimity instruction was required because there was evidence presented indicating that appellant had violated multiple provisions of the OFP, i.e., that he did not provide 24-hours' notice before going to a child's event, he made contact with A.O. at the show, and he did not immediately leave when he saw A.O., and that these violations were not means of committing an element of the charged crime, but constituted distinct elements in-and-of themselves.

To support his claim, appellant relies on *State v. Stempf*, 627 N.W.2d 352 (Minn. App. 2001). In *Stempf*, the defendant was charged with one count of possessing methamphetamine, but the state alleged two distinct possessions to support the conviction: (1) that he possessed the methamphetamine found at his work, and (2) that he possessed the methamphetamine found in the truck. 627 N.W.2d at 357. We held that the district

court's "refusal to give a specific unanimity instruction violated [the defendant's] right to a unanimous verdict" because "[s]ome jurors could have believed [the defendant] possessed the methamphetamine found on the premises while other jurors could have believed [the defendant] possessed the methamphetamine found in the truck." *Id.* at 358. However, appellant's reliance on *Stempf* is misguided.

In *Stempf*, the two acts of possession were not merely different means of committing the element of possession, but were distinct instances of an element of the crime. *Id.* The jury had to agree unanimously on which act of possession was the basis for the guilty verdict. Here, one of the elements the state needed to prove was that appellant violated a term or condition of the OFP. The OFP could have been violated by a variety of means, such as appellant contacting A.O., outside of ourfamilywizard.com,³ or by attending a child's event without giving 24-hours' notice. But the fact that appellant may have violated the OFP by several different means does not transform all of these means into an element of the offense. *See State v. Infante*, 796 N.W.2d 349, 358 (Minn. App. 2011) (holding that actions that constitute a means of committing an element of a crime, rather than two distinct instances of an element of the crime itself do not require a specific unanimity instruction).

Because any one of appellant's actions constituted a means by which he committed the element of violating the OFP, the jurors did not have to unanimously agree on the means

³ Ourfamilywizard.com is the court authorized platform by which appellant is able to communicate with A.O. about their children.

that appellant undertook to violate this element. Appellant was not denied his right to a unanimous verdict.

Affirmed.