STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1071

State of Minnesota,
Respondent,

vs.

Eugene Minor, Jr.,
Appellant.

Filed June 17, 2019
Affirmed
Reyes, Judge

Hennepin County District Court
File No. 27-CR-17-28773

Keith Ellison, Minnesota Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Reyes, Judge.

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

REYES, Judge

Appellant challenges the district court's judgment of conviction and imposition of sentence for felony domestic assault, arguing that the district court's admission of his three

prior assaults against the victim as relationship evidence prejudiced him and that the state committed prejudicial misconduct that affected his substantial rights. We affirm.

FACTS

Appellant Eugene Minor, Jr., and D.H. met in 2007 and have been in an on-and-off relationship for over ten years. D.H. described their relationship as "dysfunctional." The pair would often drink alcohol together, and appellant would get violent with D.H.

Two weeks after they met, appellant assaulted D.H. for the first time. Appellant started hitting D.H. in the face with closed fists after she failed to hear something he had said. In December 2007, appellant assaulted D.H. outside of a shelter in Minneapolis. In May 2012, appellant assaulted D.H. again. The state charged appellant for all three assaults, and appellant pleaded guilty to all three.

The events of the alleged offense on appeal occurred on September 2, 2017. Appellant and D.H. had resumed communication after several years of no contact, and appellant invited D.H. to join him and his cousin to drink at his apartment in Minneapolis. The three began drinking in appellant's room. Appellant suddenly started yelling at D.H.: "Get the f-ck – B-tch, get the f-ck out." Appellant kicked D.H. out of her chair and started kicking her and punching her in the face. D.H. tried to stop appellant by "trying to dig in his eyes." When appellant's cousin informed appellant that his eye was bleeding, appellant called 911. D.H. ran into the basement to hide. The police arrived, and D.H. remained in the basement until they left. As soon as D.H. thought the police had left, she exited through a back door.

On September 4, 2017, D.H. called the police to report a different incident. The Minneapolis police dispatched an officer to D.H.'s house. In addition to discussing the separate incident, D.H. told the officer that she had a second report to file regarding an assault that occurred two days earlier. D.H. showed the officer several scratches and bruises on her chest, arms, and face, and recounted how appellant assaulted her. The officer's body camera captured this exchange.

Sergeant Menne called D.H. to discuss the September 2, 2017 assault. After the call with D.H., Sergeant Menne reviewed the responding officer's report, pictures, body-camera video, and appellant's 911 call, and submitted the case to the county attorney's office for consideration.

In November 2017, the state charged appellant with one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2016). In February 2018, the state amended its complaint and charged appellant with one additional count of fifth-degree felony assault. Appellant stipulated to three prior assault convictions, enhancing the current charges to felonies. The district court allowed the state to introduce evidence of appellant's three prior assault convictions as relationship evidence under Minn. Stat. § 634.20 (2016). After a two-day jury trial, the jury found appellant guilty on both counts. The district court sentenced appellant to 24 months in prison. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by admitting evidence of appellant's three prior assault convictions against D.H. as relationship evidence.

Appellant argues that the admitted relationship evidence was overly prejudicial because the state unduly emphasized it and relied on it. We are not persuaded.

We review the district court's decision to admit evidence of similar conduct by the defendant against an alleged domestic-abuse victim under section 634.20 for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). "[W]e have on numerous occasions recognized the inherent value of evidence of past acts of violence committed by the same defendant against the same victim." *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999). Courts admit relationship evidence under section 634.20 if "(1) it demonstrates similar conduct by the accused; (2) the conduct is perpetrated 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." *State v. Barnslater*, 786 N.W.2d 646, 651 (Minn. App. 2010). Here, appellant only challenges the third factor.

Relationship evidence is probative if it assists the jury by providing context for the charged offense, *State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008), or it demonstrates the history of the relationship between the accused and the victim of domestic abuse. *Barnslater*, 786 N.W.2d at 650. When balancing the probative value against the potential prejudice, 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." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

Appellant argues that the "prejudice was overwhelming" for three reasons: (1) the state mentioned appellant's prior convictions in its opening statement; (2) during D.H.'s direct examination, the state elicited "not only that appellant had been convicted of three prior offenses against [D.H.], but the specific circumstances surrounding each offense; and (3) the state brought up appellant's prior convictions in its closing argument.

Although the state highlighted appellant's three prior assaults against D.H. in its opening statement, defense counsel countered the state's comments in her opening statement:

> During this trial you're going to hear about the past between [appellant] and [D.H.] and it's troubling, and it is tumultuous, *and it is not what we're here for. . . You are not here to hold him responsible for the past.* And let me be clear about that. *He is not on trial for the past.*

Before the state's direct examination of D.H., the district court provided the following limiting instruction to the jury:

> Members of the jury, as you heard in the opening, you'll hear about some conduct alleged to have been performed by [appellant] before September 2, 2017. That evidence is introduced for the limited purpose of demonstrating the nature and extent of the relationship between [appellant] and [D.H.] in order to assist you in determining whether [appellant] committed those acts with which he is charged in the complaint. [Appellant] is not being tried for, and may not be convicted of, any behavior other than the charged offenses. You're not to convict him on the basis of conduct before September 2, 2017.

The state elicited from D.H. details about the circumstances surrounding each of appellant's three prior assaults, and, at one point during direct examination, D.H. testified that she resumed communication with appellant in September 2017, "[w]hen he [came] home from prison."[1] Courts have permitted detailed testimony about past abuse as relationship evidence. *State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008) (concluding district court did not err by allowing admission of detailed testimony about "harrowing incident," that was dramatic and prejudiced defendant, because evidence had substantial probative value); *see also State v. Lee*, 645 N.W.2d 459, 466 (Minn. 2002) (holding district court did not err by admitting, as relationship evidence, testimony from a witness who observed defendant "push, punch, and kick" victim on several prior occasions, and photographs of victim's injuries). Because the evidence of appellant's prior assaults provided the jury with a general picture of appellant's nature and how the parties' fights tended to coincide with drinking alcohol, its probative value was bolstered. *Lindsey*, 755 N.W.2d at 756.

Although the state, in its closing argument, reminded the jury that appellant "has pled guilty to assaulting [D.H.] three times over the last 10 years," it also told the jury what it can and cannot do with the relationship evidence that they heard. Defense counsel had an opportunity in its closing statement to reiterate to the jury the proper use of relationship evidence. Because the admitted relationship evidence highlighted for the jury the nature

[1] At this point, defense counsel interrupted the direct examination, the parties conferred at the bench, and the district court instructed the state to ask different questions. The district court did not provide a curative instruction and neither party mentioned that appellant had been in prison for the remainder of the trial.

of the parties' relationship, and the jury received several cautionary instructions throughout trial, its probative value outweighed any danger for unfair prejudice.

II. A new trial is not warranted because appellant failed to prove that the state committed any error.

Appellant argues that the state engaged in prosecutorial misconduct because it invited Sergeant Menne to tell the jury why he had decided to submit the case for prosecution, and his answer amounted to impermissible vouching for D.H.'s credibility. We disagree.

A prosecutor may not personally vouch for the credibility of witnesses. *State v. Porter*, 526 N.W.2d 359, 364 (Minn. 1995). Improper vouching is testimony that another witness is telling the truth or that one witness is more credible than another. *State v. Ferguson*, 581 N.W.2d 824, 836 (Minn. 1998). Appellant's argument focuses on the following exchange at trial between the state and Sergeant Menne:

> Q: All right. So, after you received the statement from her, what did you do with the case?
>
> A: I submitted it to your office for consideration.
>
> Q: Okay. And what are some of your considerations when submitting it, when deciding to submit the case at that point?
>
> A: A lot of it has to go -- has to do with – she's got visible injuries, she gave me a good statement. When I talked to her she was clearly still afraid of him. She said she was afraid for her life. There's a history between the two. Taking all of that into account, I believe it's worth submitting.

Appellant characterizes Sergeant Menne's answer as testimony that "[Sergeant Menne] believed the complainant had been injured by appellant and that sufficient proof existed for a conviction." Appellant asks this court to review the alleged, unobjected-to misconduct under a modified plain-error test. *See State v. Milton*, 821 N.W.2d 789, 804 (Minn. 2012) (noting modified plain-error test imposes initial burden upon defendant to prove plain error, then burden shifts to state to prove plain error did not affect defendant's substantial rights).

Appellant's argument focuses on the purported prejudicial effect of Sergeant Menne's answer rather than on any alleged conduct by the state. The state asked Sergeant Menne general questions. Sergeant Menne testified about objective facts, such as D.H.'s visible injuries and appellant's and D.H.'s history together. We do not interpret Sergeant Menne's answer that D.H. "gave [him] a *good* statement" to be a determination of D.H.'s credibility. Rather, given the context of the questioning, it is clear that "good" is a reference to whether D.H.'s statement made the case, as a whole, sufficient to submit to the county for prosecution. Because the complained-of remark is not a result of action taken by the state, there is no error. Therefore, our modified plain-error analysis ends here.

Affirmed.