STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0982

State of Minnesota,
Respondent,

vs.

Brian Lynn Paxton,
Appellant.

Filed August 2, 2021
Affirmed
Cochran, Judge

Kanabec County District Court
File No. 33-CR-18-232

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

Barbara McFadden, Kanabec County Attorney, Steven C. Cundy, Assistant County Attorney, Mora, Minnesota (for respondent)

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

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges his convictions of domestic assault, terroristic threats, and unlawful possession of ammunition, and argues that he is entitled to reversal of his convictions and a new trial because the district court abused its discretion by admitting

relationship evidence under Minn. Stat. § 634.20 (2020). Appellant also argues that his conviction of possession of ammunition must be reversed because the evidence is insufficient to prove that he possessed ammunition. And, in a supplemental brief, appellant further challenges the admission of relationship evidence and claims that he received ineffective assistance of counsel. We affirm.

FACTS

In June 2018, respondent State of Minnesota charged appellant Bryan Lynn Paxton with three offenses: (1) domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2016), (2) threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (2016), and (3) possession of ammunition by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (2016).

The complaint alleged that on June 9, 2018, Paxton's 17-year-old son called police because his father had been making threats against him and his grandmother (Paxton's mother). After receiving the call, three deputies and a sergeant from the local sheriff's department went to the residence of Paxton's mother. There, Paxton's son told one of the responding deputies that he was with friends when he received a call from his grandmother telling him that Paxton was causing a disturbance. Paxton's son traveled to the residence. Paxton and his son got into an argument. Paxton's son told the deputies that Paxton shoved him. Paxton's son also told the deputies that Paxton threatened to "chop [him] in the throat" and that Paxton "made comments about wanting [him] dead and gone and of having visions of killing [him]." One of the responding deputies also spoke with Paxton, who admitted to having an argument with his son but denied making any threats or being

physical. After speaking with Paxton's son and his friends, the deputies arrested Paxton. During a search incident to arrest, the arresting deputy found a bullet in Paxton's pocket.

The case proceeded to a jury trial. Before trial, the parties stipulated that Paxton had two prior domestic-violence-related convictions and that he was ineligible to possess ammunition. Also before trial, the state requested that it be allowed to present "relationship evidence" involving threats made by Paxton against his mother as well as prior threats against his son. The district court concluded that the relationship evidence was admissible under Minn. Stat. § 634.20.

At trial, the jury heard testimony from the three responding deputies, the sergeant, Paxton's mother, his son, and his son's friends who were at the residence at the time of the alleged conduct. Paxton chose not to testify. The following is a summary of the evidence presented at trial.

Evidence Regarding the Alleged Incident and Prior Threats

At the time of the incident, Paxton was living in a camper on his mother's property but their relationship was strained. According to Paxton's mother, Paxton had been arguing with her "almost every day." On the day of the incident, Paxton was particularly "agitated." He threatened to have her "locked up in a mental institution" and also said that "he would see [her] dead." Because she was concerned, Paxton's mother called Paxton's son (her grandson) and asked him to come to her residence to try to deescalate the situation.

Paxton's son testified that, after receiving the call, he went to his grandmother's house with some friends to check on her. He also planned to get a fishing boat that was stored on the property. Paxton confronted his son about the boat because he did not want

his son taking the boat. In the course of the confrontation, Paxton "got up in [his son's] face," shoved him, and threatened to "chop" him in the throat. Paxton's son was concerned about the threat because he recently had neck surgery and a blow to the neck could have caused him to bleed "to death." Paxton's son testified that Paxton was well aware that he recently had neck surgery. Paxton's son also testified that Paxton had threatened him in the past with various methods of killing him, that he was fearful about the threats, and that Paxton had also threated his grandmother in the past.

Paxton's son's friends confirmed his account of the altercation. On the day of the incident, they each told the deputies that they saw Paxton approach and shove his son. The friends also confirmed that Paxton threatened to hit his son in the throat and made other threats of a more general nature.

One of the responding deputies also testified that he spoke to Paxton's younger son on the day of the incident. The younger son told the deputy that Paxton had yelled at his older brother but that he did not see Paxton push his brother. Another deputy reported having spoken to Paxton on the day of the incident. Paxton admitted to the deputy that he had a verbal dispute with his son, but he denied making any threats or getting into a physical altercation.

Evidence Regarding the Ammunition

At trial, the state produced a 357-caliber bullet. The arresting deputy identified the bullet as the one found in Paxton's pocket during a search incident to arrest. The deputy also described the process of placing the bullet into a sealed evidence bag for secure storage to preserve the evidence. The deputy acknowledged a discrepancy regarding the caliber of

the bullet in his police report. He attributed the discrepancy to human error. Another deputy on the scene testified that she too erred in her police report regarding the caliber of the bullet. She indicated that the error was a "typo." Finally, the sergeant, who worked as an evidence technician for the sheriff's department at the time of Paxton's arrest, discussed the process that the sheriff's department used to collect and store evidence. And the sergeant testified that, based on his training and experience, the proper procedures were used in placing the bullet into evidence and logging it into the department's computer system.

The Limiting Instruction

During trial, the district court gave the jury a limiting instruction regarding evidence introduced by the state about the relationship between Paxton, his son, and his mother. The district court gave the instruction on three occasions. When the jury first heard testimony about the threats that Paxton made towards his mother, the district court instructed the jury as follows:

> [The] State has introduced conduct by Mr. Paxton on the alleged date of the offense that was admitted for the limited purpose of demonstrating the nature and extent of the relationship between Mr. Paxton, [his son], and other family or household members. It's admitted to assist you in determining whether Mr. Paxton committed those acts with which he's charged in the complaint.
>
> The defendant is not being tried for—for and may not be convicted of any behavior other than the charged offenses. You're not to convict Mr. Paxton on the basis of similar conduct that may have occurred towards others. To do so might result in unjust double punishment.

When the district court first provided the instruction, it told the jury that it should keep the instruction "in mind as you hear the evidence in this case." The district court repeated the instruction one more time during testimony and again after closing arguments.

The jury found Paxton guilty of all three crimes charged. This appeal follows.

DECISION

Paxton argues that he is entitled to a new trial for three reasons. First, he argues that the district court abused its discretion by allowing the state to present evidence of threats that he made against his mother. Second, he argues that the evidence is legally insufficient to prove that he possessed ammunition. Third, in a supplemental brief, he argues that he received ineffective assistance of counsel. We address each argument in turn.

I. The district court did not abuse its discretion by admitting evidence of Paxton's threats against his mother.

Paxton argues that the district court abused its discretion by allowing the state to introduce evidence of threats that Paxton made against his mother as relationship evidence under Minn. Stat. § 634.20. He does not challenge the admission of evidence regarding prior threats against his son, the alleged victim of the offenses. We first review the law surrounding the admission of relationship evidence and then address Paxton's arguments.

Evidence falling within the scope of Minn. Stat. § 634.20 is commonly referred to as relationship evidence. *See State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006) (noting that evidence offered under section 634.20 is a subtype of general relationship evidence). Section 634.20 provides that "[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." Minn. Stat. § 634.20. "Domestic conduct" includes, among other things, "evidence of domestic abuse." *Id.* "Domestic abuse" includes "the infliction of fear of imminent physical harm, bodily injury, or assault," if committed against a family or household member.[1] Minn. Stat. § 518B.01, subd. 2(a)(2) (2020); *see also* Minn. Stat. § 634.20 (incorporating that definition of domestic abuse). "We review the district court's decision to admit relationship evidence for an abuse of discretion." *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). To be entitled to a new trial, "an appellant must demonstrate that the district court erred by admitting the evidence and that the erroneously admitted evidence substantially influenced the jury's decision." *Id.*

Paxton first contends that the district court erred by treating evidence of threats against his mother as relationship evidence under section 634.20. He further argues that, even if the evidence falls within section 634.20, the district court abused its discretion by admitting the evidence because its probative value was substantially outweighed by the danger of unfair prejudice. We are not persuaded by either argument.

A. The district court properly considered the evidence under section 634.20.

Paxton argues that the district court abused its discretion by admitting evidence of his threats against his mother as relationship evidence under section 634.20 because the admission of the evidence violated the general ban against propensity evidence set forth in Minn. R. Evid. 404(b). We disagree.

[1] "Family or household members" includes "parents and children." Minn. Stat. § 518B.01, subd. 2(b) (2020).

Minn. R. Evid. 404(b)(1) provides that evidence of a defendant's prior "crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." But "evidence of domestic conduct by the accused against family or household members other than the victim may be admitted pursuant to Minn. Stat. § 634.20." *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015). "[T]he rationale for admitting relationship evidence under section 634.20 is to illuminate the relationship between the defendant and the alleged victim and to put the alleged crime in the context of that relationship." *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). Evidence of the relationship between a defendant and a non-victim family member is relevant because "evidence showing how a defendant treats his family or household members . . . suggests how the defendant may interact with the victim." *Id.* Moreover, the supreme court has expressly adopted Minn. Stat. § 634.20 as a rule of evidence and has held that the rule allows "the introduction of evidence of similar acts . . . without requiring that they first be established by clear and convincing evidence" as would be required for propensity evidence. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004).

The evidence of Paxton's threats against his mother fits squarely within the scope of section 634.20. As noted above, section 634.20 provides that evidence of "domestic conduct" by the accused against other family or household members is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice. The evidence fits within the scope of the statute because Paxton's mother is a member of Paxton's family within the meaning of the statute. And Paxton's threats constitute

evidence of "domestic conduct" because "domestic conduct" includes "the infliction of fear of imminent physical harm, bodily injury, or assault." *See* Minn. Stat. §§ 518B.01, subd. 2(a)(2), 634.20. Paxton's mother's testimony establishes that Paxton intentionally inflicted fear of physical harm and bodily injury. Paxton's mother testified that Paxton got "in [her] face" and threatened that "he would see [her] dead" or "locked up in a mental institution." Further, she testified that his threats made her fearful. Paxton's statements can reasonably be construed as intentionally inflicting fear of imminent physical harm in his mother. We are not persuaded otherwise by Paxton's assertions in his supplemental brief that his statements to his mother show nothing more than an unhealthy relationship. Thus, the district court properly concluded that Paxton's threats against his mother fell within the scope of section 634.20, and the district court properly analyzed the evidence under section 634.20 rather than rule 404(b).[2]

B. The district court did not abuse its discretion by determining that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence.

Paxton also argues that, even if the evidence of Paxton's threats against his mother was properly analyzed by the district court as relationship evidence under section 634.20, the district court abused its discretion by determining that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence. Again, we disagree.

[2] Alternatively, Paxton's statements may have been admissible as immediate-episode evidence. *State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009). Immediate episode evidence is admissible, without reference to rule 404(b), "where two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving the other." *Id.* at 425 (quotation omitted).

The record supports the district court's determination. First, the testimony about Paxton's prior threats had high probative value. The evidence of Paxton's threats against his mother helped to illuminate the relationship between Paxton and his son. *See State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (noting "the probative value of relationship evidence involving a family or household member is high" because it "sheds light on how the defendant interacts with those close to him" (quotation omitted)). And, as the district court noted, the threats provided context for the jury to evaluate the conflicting statements made by Paxton and his son to the deputies about the conduct at issue. Assisting the jury by "providing a context for the charged offense[s]" is "particularly important" when the jury has to evaluate contradictory statements. *State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008). In addition, relationship evidence is important in cases involving charges of domestic abuse because "[d]omestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate over time, and it is often underreported." *McCoy*, 682 N.W.2d at 161.

Second, when balancing the probative value against the potential for unfair prejudice, the district court properly applied the standard in section 634.20 and appropriately exercised its discretion. The district court recognized that, given the nature of the evidence, the evidence could have been prejudicial to Paxton. But the district court concluded that the danger of unfair prejudice did not substantially outweigh the probative value. In deciding whether to allow the evidence to be admitted, the district court specifically noted that it would provide a limiting instruction to the jury.

We are not persuaded otherwise by Paxton's argument that "[t]he inflammatory nature of the conduct—threatening one's own mother with death and civil commitment" demonstrates that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. "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." *Ware*, 856 N.W.2d at 729 (quotation omitted). Here, the district court immediately gave a limiting instruction after the jury first heard testimony about threats to Paxton's mother and repeated its limiting instruction two more times before the jury deliberated. That instruction reminded the jury that Paxton was "not being tried for . . . and may not be convicted of any behavior other than the charged offenses." We "assume that the jury followed the [district] court's instructions and properly considered the evidence." *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). Thus, by giving this limiting instruction, the district court guarded against the possibility that the jury would use the evidence for an improper purpose. In sum, while the evidence of Paxton's threats against his mother had the potential to be damaging to Paxton's case, the evidence did not have the potential to persuade by illegitimate means. Accordingly, Paxton has not shown that the district court abused its discretion by concluding that the potential for unfair prejudice did not substantially outweigh the probative value of the relationship evidence involving Paxton's mother.

II. The evidence is sufficient to support Paxton's conviction of possessing ammunition.

Paxton makes an additional argument for reversal of his conviction of unlawful possession of ammunition. Paxton argues that the evidence is insufficient to support his conviction because the police testimony created a reasonable doubt as to whether the bullet produced at trial was the same bullet as the one found in his pocket at the time of his arrest. The state contends that the testimony provided a sufficient chain of custody to prove that the bullet produced at trial was the bullet recovered from Paxton when he was arrested. We agree with the state.

Where, as here, the state proves an offense with direct evidence, we apply the traditional standard in reviewing the sufficiency of the evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Under the traditional standard, we "view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting with that verdict." *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020) (quotation omitted). This court "will not overturn a verdict if, giving due regard to the presumption of innocence and to the prosecution's burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense." *Id.* (quotation omitted).

The state charged Paxton with violating Minn. Stat. § 624.713, subd. 1(2), which provides that "a person who has been convicted of . . . a crime of violence" shall not "be entitled to possess ammunition or a pistol or . . . any other firearm." To convict Paxton of this offense based on possession of ammunition, the state had to prove, in relevant part,

that Paxton knowingly possessed the ammunition and that he was ineligible to possess it. *See State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017) (discussing elements of possession of firearm by ineligible person).

Viewing the evidence in the light most favorable to the verdict and assuming the jury disbelieved any conflicting testimony, we conclude that the evidence is sufficient to support Paxton's conviction of unlawful possession of ammunition. Paxton stipulated that he was ineligible to possess ammunition because of two prior convictions. The deputy who discovered the bullet in Paxton's pocket testified that he "located a 357-magnum bullet" in Paxton's pocket. And he testified that he placed that bullet into a "sealed evidence bag."

The evidence technician, a sergeant who also worked as a field-training officer and was on the scene when the arresting officer discovered the bullet, testified as to the chain-of-custody process used by the department. He testified that sealed evidence bags are logged into the computer system and then are placed into an evidence locker to which only the evidence technicians have access. The technician explained that each evidence locker stores only evidence from one particular case and each item of evidence stored in the locker is identified with a property number that is associated with a particular case. And he testified that all the proper procedures for placing an item into evidence were followed in this case with respect to the bullet found in Paxton's pocket. In finding Paxton guilty of unlawful possession of ammunition, the jury necessarily concluded that the deputy and the sergeant were credible and that the bullet produced at trial was the bullet recovered from Paxton following his arrest.

Paxton argues that discrepancies in the reports and testimony of certain deputies regarding the caliber of the bullet renders the evidence insufficient to support his conviction. But Paxton is essentially asking us to reweigh the evidence or to disregard the jury's credibility determination regarding that testimony. We follow the jury's credibility determinations. *Balandin*, 944 N.W.2d at 213. And case law "does not permit us to re-weigh the evidence." *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009). On this record, Paxton has given us no basis to conclude that the jury could not have reasonably found him guilty of being an ineligible person in possession of ammunition. In sum, the evidence is sufficient to support his conviction of unlawful possession of ammunition.

III. Paxton did not receive ineffective assistance of counsel.

In his supplemental brief, Paxton argues that he received ineffective assistance of counsel because his trial counsel (1) did not call his younger son to testify, and (2) failed to challenge the introduction of the relationship evidence. We are not persuaded.

To show that he received ineffective assistance of counsel, Paxton must "prove that his counsel's representation fell below an objective standard of reasonableness" and that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020) (quotation omitted) (describing the "two-prong test set forth in" *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). Paxton has not made this showing and presents no legal authority in support of his allegations. His argument that his trial counsel was ineffective for not calling Paxton's younger son to testify is unpersuasive because decisions about which witnesses to call are a matter of trial

strategy that we generally do not review. *See Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013) (explaining that defense counsel's presentation of evidence to the jury is considered part of trial strategy). And Paxton's second argument mischaracterizes the record. His trial counsel argued against admission of the relationship evidence, but the district court concluded that the threats against Paxton's mother were admissible over his counsel's objection. Accordingly, Paxton has not demonstrated in his supplemental brief that he is entitled to relief.

Affirmed.