**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0946**

State of Minnesota,
Respondent,

vs.

Joseph Baby Gbassie,
Appellant.

**Filed July 25, 2022**
**Affirmed in part, reversed in part, and remanded**
**Bratvold, Judge**

Ramsey County District Court
File No. 62-CR-19-2724

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

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

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

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

**NONPRECEDENTIAL OPINION**

**BRATVOLD**, Judge

In this appeal from a final judgment of conviction for first- and second-degree criminal sexual conduct, appellant argues that the district court erred by admitting relationship evidence and, alternatively, that his second-degree criminal-sexual-conduct

conviction was an included offense of the first-degree conviction and so must be reversed. Because we conclude the district court did not abuse its discretion by admitting relationship evidence, we affirm appellant's conviction for first-degree criminal sexual conduct. But because appellant's conviction for second-degree criminal sexual conduct was for an included offense, we reverse and remand for the district court to vacate that conviction.

## FACTS

Respondent State of Minnesota charged appellant Joseph Baby Gbassie with one count of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2016) (count one), and one count of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2016) (count two), alleging that Gbassie had sexual contact with then-eight-year-old G.N.

G.N.'s mother (mother) and Gbassie's father were raised by mother's legal guardian (guardian). Mother considered Gbassie's father to be her brother. From 2017 to 2018, Gbassie lived in the same home as mother, guardian, G.N., and mother's other daughter, six-year-old W.N. On November 15, 2018, shortly after Gbassie moved out of the home, mother was bathing G.N. and W.N., and "both girls pulled away" when mother tried to wash their genital areas. Both children told mother and guardian that Gbassie had touched them in their genital areas and threatened to kill them if they told anyone what had happened. Guardian called the police.

A nurse at the Midwest Children's Resource Center (MCRC) interviewed G.N., and recordings of the interviews were later received as trial exhibits. G.N. stated that Gbassie had "put his hands between [her] legs" and on her "private part." During a second interview

at MCRC several months later, G.N. stated that Gbassie "put his private part in [hers]." W.N. was also interviewed at MCRC. The state's initial complaint charged Gbassie with criminal sexual conduct against both G.N. and W.N. Gbassie moved to sever the charges, and the district court granted Gbassie's motion.

Before Gbassie's trial on the charges involving G.N., the state moved to admit "evidence that [Gbassie] sexually assaulted G.N.'s younger sister W.N." The state argued that the evidence was "relationship evidence" that would "provide[] strong context into the family dynamics in this case" and "the alleged conduct for which [Gbassie] is charged." Gbassie objected. The district court granted the state's motion, concluding that the evidence would be "highly probative because it shows evidence of similar conduct" and because the assaults involved similar victims, the nature of Gbassie's relationship with the victims was similar, and the evidence provided relevant context. The district court determined the evidence was prejudicial to Gbassie, but not unfairly prejudicial. The district court also stated it would give a limiting instruction to the jury.

During trial, the state presented testimony from witnesses, including G.N., W.N., mother, guardian, an MCRC nurse, two law-enforcement officers, and an MCRC therapist.

G.N. testified that Gbassie "touched [her] with both his private part and his hand" and "put his fingers in [her] private parts." G.N. testified that this had happened while mother was at work. G.N. also testified she did not tell anyone when it happened because Gbassie lived with them and because Gbassie had "threatened" her.

W.N. testified that Gbassie "touched [her] in unnecessary places" and that Gbassie threatened to kill her. W.N. testified that she told mother about what Gbassie did because she felt safe around mother.

At this point, the district court instructed the jury that W.N.'s testimony was "offered for the limited purpose of assisting you in determining whether the defendant in this case committed the acts with which the defendant is charged in the complaint." After a brief discussion between the court and the parties out of the presence of the jury, the district court gave the jury another instruction:

> The evidence is being offered for the limited purpose of *demonstrating the nature and extent of relationship between the defendant and other household members* in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the complaint in this case.
>
> The defendant is not being tried for and may not be convicted of any behavior other than the charged offenses in this case. You are not to convict the defendant on the basis of conduct involving other people not relating to the charges in this case. To do so might result in unjust double punishment.

(Emphasis added.)

Mother testified about when G.N. and W.N. told her about Gbassie's assaults and also generally described her relationship with Gbassie. The district court gave no limiting instruction during mother's testimony. Guardian testified and described when and how G.N. told her of Gbassie's assault.

The MCRC nurse testified about G.N.'s first interview, when G.N. told her that Gbassie had touched her but stopped talking after the nurse tried to get more details. The

nurse testified that G.N. returned for a second interview and gave more details, including that Gbassie touched her genitals with his genitals. The nurse also testified that it was not uncommon for children to delay reporting of sexual assault.

The MCRC therapist testified that G.N. was referred to her after the first interview. The therapist testified that G.N. seemed "quite fearful" at first and that G.N. had "delayed reporting" the assault because she was afraid of Gbassie, who threatened to harm her.

After the parties rested, the district court gave a limiting instruction to the jury that was largely identical to the one provided during W.N.'s testimony. The prosecuting attorney commented on the relationship evidence during the state's initial closing argument, stating, "This case is just about [G.N.] and what happened to [G.N.]. The reason that [W.N.] was called is, to put it in context and to sort of relay the family situation . . . ." Gbassie's attorney did not comment on W.N.'s testimony or the relationship evidence during Gbassie's closing argument. The jury found Gbassie guilty on both counts.

The district court sentenced Gbassie to 156 months' confinement on count one. During the hearing, the parties and the district court agreed that no conviction should be entered for count two because it was a lesser-included offense of count one. Even so, the final warrant of commitment shows a conviction on both counts but with no sentence imposed for count two.

Gbassie appeals.

## DECISION

### I. The district court did not abuse its discretion by admitting relationship evidence about Gbassie and W.N.

Over Gbassie's objection, the district court admitted W.N.'s and mother's testimony about Gbassie's assaults on W.N. under the relationship-evidence statute, Minn. Stat. § 634.20 (2020), which allows for admission of "[e]vidence of domestic conduct by the accused . . . against other family or household members." "Domestic conduct" in section 634.20 includes "domestic abuse" as defined in section 518B.01, subdivision 2: "the infliction of fear of imminent physical harm, bodily injury, or assault" as well as "criminal sexual conduct, within the meaning of section 609.342 [and] 609.343," when committed against a family or household member. Minn. Stat. § 518B.01, subd. 2(a)(2), (3) (2020). Relationship evidence is admissible unless its "probative value is substantially outweighed by the danger of unfair prejudice." Minn. Stat. § 634.20.

We have explained that the relationship-evidence statute allows evidence to show "how a defendant treats his family or household members . . . [and] sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim." *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010). We review the district court's decision to admit relationship evidence for abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004).

Gbassie argues the district court committed reversible error by admitting evidence about Gbassie's assaults on W.N. because the evidence had "little to no probative value, and any probative value it did have was . . . outweighed by the unfair prejudice." Gbassie

also argues the district court committed reversible error by failing to give a limiting instruction to the jury during mother's testimony. We discuss each argument in turn.

### A. The district court did not abuse its discretion when it determined that the probative value of the relationship evidence was not substantially outweighed by the danger of unfair prejudice.

Gbassie argues that the challenged relationship evidence did not bolster witness credibility and was impermissible propensity evidence. Gbassie also contends any probative value was substantially outweighed by the risk of unfair prejudice because it "portray[ed] [him] in the most negative light possible" and provided the state with an "unfair advantage." We are not persuaded for four reasons.

First, the challenged relationship evidence is precisely the type of "domestic conduct" evidence that is admissible under section 634.20. Relationship evidence clarifies a defendant's treatment of family or household members. *Valentine*, 787 N.W.2d at 637. It can explain or provide context for a family member's fear of a defendant as well as the defendant's prior attempts to "manipulate, control, [or] restrain" that family member. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). More specifically, it may provide context for a victim's behavior, such as a delay in reporting abuse. *State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008). Threat and context evidence has "obvious probative value." *Andersen*, 900 N.W.2d at 441.

Evidence of Gbassie's conduct towards W.N., including his alleged sexual assaults and threats, has "obvious probative value" as to the state's charges involving G.N. because it is relevant to prove the nature of Gbassie's relationship with G.N. and her family. Given

that both W.N. and G.N. reported Gbassie's assaults and threats *after* Gbassie moved out of their home, the relationship evidence explains their delay in reporting.

Second, Gbassie contends the similarities between the charged offenses and the evidence about his conduct with W.N. militate against admission. We disagree. In *Andersen*, we held it was not error for the district court to admit relationship evidence that the defendant had "previously verbally and physically abused" his significant other, who was the victim involved in the pending charges. 900 N.W.2d at 441. Even though both the offense charged and the relationship evidence involved the same general facts—verbal and physical domestic abuse—and the same victim, we explained that the relationship evidence offered context and illuminated the defendant's relationship with household members. *Id.*

Third, we reject Gbassie's argument that the admitted relationship evidence posed a substantial risk of unfair prejudice. The district court gave limiting instructions to the jury, the sufficiency of which is considered below. We presume the jury followed these instructions and appropriately limited its use of the relationship evidence. *State v Riddley*, 776 N.W.2d 419, 428 (Minn. 2009); *see also Andersen*, 900 N.W.2d at 441-42(emphasizing the district court's limiting instructions as well as the fact that the risk of unfair prejudice must "*substantially* outweigh" the probative value).

The relationship evidence admitted against Gbassie was prejudicial. But we discern no *unfair* prejudice on this record. "[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). Because the relationship evidence was used for a

valid purpose—to depict and provide context for Gbassie's relationship with G.N. and her family—we conclude any prejudice to Gbassie was not "unfair."

Fourth, Gbassie argues that the state obtained an "unfair advantage" by admission of the relationship evidence after the district court had severed the charges involving G.N. from the charges involving W.N. Because Gbassie requested severance, he cannot now complain about relationship evidence that was otherwise admissible in the severed trial. In short, we see no "unfair advantage" to the state by granting Gbassie's motion to sever.

We conclude the district court did not abuse its discretion when determining that the probative value of the relationship evidence was not substantially outweighed by the risk of unfair prejudice.

**B. Any error was harmless.**

Even if we assume the district court abused its discretion by admitting the relationship evidence about Gbassie's conduct toward W.N., any error was harmless. "An error is harmless if there is no reasonable possibility that it substantially influenced the jury's decision." *State v. Taylor*, 869 N.W.2d 1, 14 (Minn. 2015) (quotation omitted). This determination requires that we review the record as a whole and "consider the manner in which the evidence was presented, whether the evidence was highly persuasive, whether it was used in closing argument, and whether it was effectively countered by the defense." *State v. Courtney*, 696 N.W.2d 73, 80 (Minn. 2005).

We conclude any error was harmless for four reasons. First, the testimony about Gbassie's assaults and threats towards W.N. was brief, and the district court's limiting instructions properly guided the jury's consideration of the evidence. Second, while the

challenged evidence may have been "highly persuasive" as to Gbassie's actions towards W.N., it was not "highly persuasive" as to whether Gbassie committed the charged offense. W.N. testified about herself and not about Gbassie's conduct with G.N. Also, both mother and W.N. were subject to cross-examination. Third, during closing arguments, the prosecuting attorney commented on the relationship evidence and underscored the district court's limiting instruction, cautioning the jury not to use the relationship evidence as direct proof of Gbassie's guilt for the charge relating to G.N.

Fourth, the record as a whole contains strong evidence supporting Gbassie's guilt. G.N. testified in detail about Gbassie's abuse. Her testimony was corroborated by non-relationship testimony from mother, the MCRC therapist, and law enforcement, as well as recordings of G.N.'s two interviews at MCRC. Thus, even if we assume the district court abused its discretion by admitting relationship evidence related to W.N., we conclude any error was harmless. *See id.* at 81 (finding error to be harmless where facts establishing the underlying offense were corroborated by multiple trial witnesses and overall "evidence of . . . guilt was strong").

### C. The district court's failure to provide a limiting instruction before or during mother's testimony did not prejudice Gbassie or affect his substantial rights.

Gbassie argues that the district court's limiting instructions for the relationship evidence were insufficient. Although a limiting instruction was read during W.N.'s testimony and at the close of trial, no limiting instruction was given before or during mother's testimony. Gbassie did not request a limiting instruction at the time of mother's

testimony, nor did he object during trial, so our review is for plain error. *State v. Meldrum*, 724 N.W.2d 15, 19 (Minn. App. 2006), *rev. denied* (Minn. Jan. 24, 2007).

Generally, a limiting instruction should be given every time relationship evidence is admitted as well as at the close of trial. *Id.* at 21. Because the district court failed to provide a limiting instruction before or during mother's testimony, it erred. Thus, two steps of plain-error review—(1) error (2) that is plain—are satisfied. *See id.* at 20 (providing a three-step test for correction of unobjected-to errors).

Turning to the third step, whether the error affected the defendant's substantial rights, we consider that "other evidence offered during trial may negate the allegation that the probative value of other-crimes evidence is outweighed by its potential for unfair prejudice." *Id.* at 22. For example, in *Meldrum*, the district court's error in failing to provide limiting instructions was negated where the conviction was otherwise supported by eyewitness testimony, a 911 call, and testimony from responding officers. *Id.* at 21-22. Similarly, in *State v. Frisinger*, the supreme court held that the district court's failure to give a limiting instruction was negated where the conviction was supported by eyewitness testimony establishing the elements of the crime. 484 N.W.2d 27, 31 (Minn. 1992).

The same reasoning applies here. Considerable evidence supports Gbassie's conviction, including non-relationship testimony from G.N., mother, guardian, G.N.'s MCRC therapist, and law enforcement, as well as G.N.'s MCRC interviews. Moreover, while the prosecuting attorney referred to relationship evidence during closing argument, the prosecuting attorney did not suggest that the jury use it for an improper purpose, such as to directly support any of the elements of the crimes relating to G.N. *See Meldrum*,

724 N.W.2d at 22 ("[T]he prosecution did not suggest an improper use of the other-crimes evidence."); *Frisinger*, 484 N.W.2d at 31 ("[T]he prosecutor did not suggest that the jury use the other-crime evidence for an improper purpose.").

Finally, the district court gave an appropriate limiting instruction before the jury retired for deliberation. For these reasons, while the district court erred by failing to provide a limiting instruction before or during mother's testimony, Gbassie has demonstrated no prejudice affecting his substantial rights.

## II. The district court erred in entering a conviction for second-degree criminal sexual conduct.

Gbassie argues the district court erred by entering convictions for counts one and two because count two is a lesser-included offense of count one. "Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2020). The state concedes, and we agree, that it was error for the district court to enter convictions on both counts. *See id.*, subd. 1(1) (defining "[a]n included offense" as, among other things, "a lesser degree of the same crime"). Thus, we reverse and remand for the district court to vacate Gbassie's conviction for count two, second-degree criminal sexual conduct.

## III. Gbassie's pro se arguments are forfeited.

In a pro se supplemental brief, Gbassie makes many arguments for reversal. These arguments generally allege insufficiency of the evidence at trial, deficiencies in the police investigation of the allegations against Gbassie, and deception by the state, law enforcement, and the victim's family. Gbassie's pro se brief, however, "contains no

argument or citation to legal authority in support of [his] allegations." *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Thus, the issues in Gbassie's pro se brief are forfeited, and we decline to address them. *See id*. (deeming issues forfeited because pro se brief had no legal argument or citation to legal authority).

**Affirmed in part, reversed in part, and remanded.**