STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1132

State of Minnesota,
Respondent,

vs.

Daniel Nathan Breyfogle,
Appellant.

Filed September 19, 2022
Affirmed
Wheelock, Judge

Lyon County District Court
File No. 42-CR-20-535

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Rick Maes, Lyon County Attorney, Marshall, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the admission of relationship evidence at trial, the sufficiency of the evidence supporting his aggravated sentence, and the determination that there were two separate behavioral incidents subject to sentencing. We affirm.

FACTS

Respondent State of Minnesota charged Breyfogle with false imprisonment, threats of violence, third-degree assault, two counts of first-degree burglary, and two counts of domestic assault. The parties tried the matter to a jury. The following facts are taken mainly from testimony presented at the jury trial, viewed in the light most favorable to the jury verdict and supplemented by the record when relevant to the issues on appeal.

On June 27, 2020, appellant Daniel Nathan Breyfogle's girlfriend, A.S., saw him drinking alcohol at her sister's house and told him that he could not stay at her duplex that evening. A.S. was living with two of her children, who were six and nine years old at that time. Breyfogle did not live with A.S., but he frequently spent the night at her home. They had been dating for about nine months.

Later that evening, A.S. was home with her six-year-old son when Breyfogle walked into her unlocked duplex, clearly intoxicated. A.S. asked Breyfogle to leave several times, but he refused. Breyfogle kicked something at A.S., and when she looked down, he began to kick her. Breyfogle stomped on her face, chest, and neck, causing A.S. to lose consciousness for a short period of time. Breyfogle called A.S. a "f-cking b-tch," told her that "if he can't have [her], nobody's gonna have [her]," and said that he was going to kill her. A.S.'s son was "standing right there" and "was telling [Breyfogle] to stop, quit being mean to his mom, quit kicking his mom." During the attack, Breyfogle ripped a drug patch off of A.S.'s arm, tearing some of her skin off with it. A.S. repeatedly attempted to get out of the duplex, but Breyfogle stopped her. At one point, A.S. tried to get her son out of the duplex through a window, but Breyfogle stopped her. A.S. testified that she did not fight

back because she knew how violent Breyfogle could get, and she thought that if she fought back, he would become more violent and endanger her child.

Eventually, Breyfogle became calmer, and A.S. took her child into the bedroom to sleep. Breyfogle lay down in front of the door to the bedroom. When A.S. woke up in the morning, Breyfogle was asleep, still blocking the bedroom door. When he woke up, Breyfogle told A.S. that he loved her and "didn't mean to" hurt her, and he asked her to lie to the drug court, with which A.S. was engaged, and say that she had been beaten up during a robbery.

In addition to A.S.'s testimony, her son testified that he saw Breyfogle kick A.S. in the face, and the physician who treated A.S. reported that she had soft-tissue injuries, contusions, and symptoms consistent with a concussion.

Over Breyfogle's objection, the state introduced testimony from A.S. and from Breyfogle's ex-girlfriend, N.W., as relationship evidence of Breyfogle's prior conduct with his romantic partners. A.S. testified that in April 2020, she and Breyfogle began arguing about her "leaving him," and he showed up to her house "very . . . under the influence," and "he was screaming and got very violent" with her. A.S. said that she tried to get out the door, but every time she tried, he would push her. When A.S. finally ran out the door, she ran down the block, hid behind some bushes, and called 911.

N.W. testified that Breyfogle had been her boyfriend for about five years. She testified that one night in 2015, she and Breyfogle were staying at her parent's home. She and Breyfogle were sleeping after Breyfogle passed out from drinking alcohol, and he woke up and urinated in a garbage can next to her bed. She asked what he was doing, and

Breyfogle laughed in response, but when she told him not to do it, he turned around and hit her in the mouth. N.W. testified that in 2016 or 2017, she and Breyfogle got into an argument when he was "extremely intoxicated," and she poured his bottle of alcohol down the sink. Breyfogle angrily insulted N.W., who smacked him. Breyfogle then punched N.W., which spun her around and caused her head to hit the counter and her to fall to the ground. He then continued to kick and hit N.W., "kind of stomp[ing]" on her. The district court instructed the jury in the proper use of relationship evidence before each woman's testimony regarding these prior events and issued another instruction as part of the final jury instructions.

Breyfogle testified that he was sober on the night of June 27 and slept at a friend's house. He claimed that he carried a SoberLink device that he had to blow into several times a day to prove his sobriety as one of his parole conditions. Breyfogle's supervising agent testified, however, that the last day that Breyfogle used the SoberLink device was June 24, 2020.

The jury found Breyfogle guilty of false imprisonment, threats of violence, third-degree assault, domestic assault with intent to cause fear, and domestic assault with intent to inflict bodily harm, and two counts of first-degree burglary. After a sentencing trial, the jury answered questions on a special verdict form regarding aggravating factors. Specifically, the jury responded in the affirmative to three questions regarding the particular vulnerability of the victim, finding that (1) there was a child present in the home; (2) the presence of the child prevented the victim from fighting back against, fleeing from,

or seeking help against the defendant; and (3) the defendant knew or should have known the victim was vulnerable due to the child's presence.

The district court determined at sentencing that the false imprisonment of A.S. on the night of June 27 was a separate behavioral incident from the burglary and assault that occurred earlier that evening. The district court therefore pronounced a sentence for the false-imprisonment charge in addition to the sentences for first-degree burglary and third-degree assault. It determined that the fact that the burglary offense was committed in the presence of a child supported an aggravated sentence and sentenced Breyfogle to an upward durational departure, imposing a sentence of 162 months.

Breyfogle appeals.

DECISION

I. The district court did not abuse its discretion by allowing evidence of prior assaults as relationship evidence.

In general, evidence about criminal activity unrelated to the crime for which a person is on trial is inadmissible. *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). One exception to this rule allows "[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members" to be admitted "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 (2020); *see also State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015) (adopting statute as a rule of evidence). "The statute is unambiguous—evidence of similar conduct

in domestic abuse trials is relevant and admissible unless it should be excluded for the reasons listed." *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). This type of evidence is commonly called "relationship evidence." *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010).

We review the admission of relationship evidence over a defendant's objection for an abuse of discretion. *Id.* at 553. "For a reversal of a district court's evidentiary ruling, [an appellant] must prove that the admission of evidence was erroneous and prejudicial." *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009). This court "will reverse the district court's ruling if the error substantially influenced the jury's decision." *Id.*

Breyfogle argues that the relationship evidence involving N.W.[1] had minimal probative value because N.W. was not the victim of the charged offenses, and because her evidence was submitted to support A.S.'s credibility and not to give context about the relationship. However, this court has stated that

> the 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. Obviously, evidence showing how a defendant treats his family or household members, such as his former spouses or other girlfriends, 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) (citation omitted). Based on this analysis, this court concluded in *Valentine* that the district court did not abuse its

[1] Breyfogle does not challenge the relationship evidence involving A.S.

discretion by admitting evidence of the appellant's abuse of an ex-girlfriend to show "how the defendant interacts with those close to him." *Id.*

Here, the probative value of the evidence was to show how Breyfogle interacted with romantic partners during an argument while drunk. This was particularly probative regarding A.S.'s credibility because Breyfogle planned to impeach her based on prior convictions. Breyfogle does not cite to any caselaw supporting his argument that relationship evidence cannot be allowed to support a victim's credibility. Indeed, relationship evidence is probative in large part because it assists the jury in determining whether to credit the victim's account. N.W. testified briefly, and her testimony was not especially graphic or inflammatory. The district court issued limiting instructions regarding relationship evidence to the jury both prior to the testimony and with the final jury instructions. We therefore conclude that the district court did not abuse its discretion by allowing N.W.'s relationship-evidence testimony.

II. Sufficient evidence supported the jury's findings supporting the district court's imposition of an aggravated sentence.

After the trial, the jury was asked on the special verdict form regarding aggravating factors: "Did the presence of a child prevent the victim from fighting back against, fleeing from, or seeking help against the defendant?" The jury answered, "[Y]es." The district court relied on this finding when it granted the state's motion for an upward durational departure on Breyfogle's sentence.

A district court may depart from the presumptive sentence set forth in the sentencing guidelines if substantial and compelling circumstances exist. Minn. Sent'g Guidelines

2.D.1 (2020). The guidelines contain a list of aggravating factors that can support an upward dispositional or durational departure. Minn. Sent'g Guidelines 2.D.3.b (2020). One aggravating factor is if "[t]he offense was committed in the presence of a child." Minn. Sent'g Guidelines 2.D.3.b(13).

> [A] durational departure may be warranted when an offense is committed in the presence of a child in two situations: first, when the defendant's conduct is particularly outrageous because the child, while technically not a victim of the offense, is a victim for having witnessed the offense; and second, when the victim is particularly vulnerable due to the child's presence in the home.

State v. Robideau, 796 N.W.2d 147, 151 (Minn. 2011). "A finding of particular vulnerability may be made when the presence of a child during the commission of a crime causes the victim to be particularly vulnerable by compromising the victim's ability to flee." *State v. Grampre*, 766 N.W.2d 347, 353 (Minn. App. 2009), *rev. denied* (Minn. Aug. 26, 2009).

A departure from the sentencing guidelines will be reversed "[i]f the district court's reasons for departure are improper or inadequate and there is insufficient evidence in the record to justify the departure." *State v. Jackson*, 749 N.W.2d 353, 357 (Minn. 2008) (quotation omitted). "Questions of law are reviewed de novo." *Id.*

Here, A.S. testified:

> Q: When [Breyfogle] was stomping on you and screaming that he was going to kill you did you fight back?
> A: No I did not.
> Q: Why not?
> A: Because of the first altercation that we had. Um I knew how violent he gets and I was protecting my child.

> Q: What do you mean you were protecting your child?
> A: I didn't want to fight back 'cause he would have gotten more enraged.

She then testified that she could not call for help because Breyfogle had her phone, and when she asked him to call 911, he refused. She testified that she tried to take her son and leave by trying to get out the front and back doors and "even went to the extreme of trying to get [her] son pushed out the window," but Breyfogle would not let her. She eventually took her son into a bedroom and slept with him there while Breyfogle blocked the door.

Breyfogle argues that because A.S. attempted to flee and asked Breyfogle to call for help, she was not particularly vulnerable due to the presence of her child. And because she did not fight back for fear that Breyfogle would become angrier, A.S. was not choosing to avoid fighting back because of her child's presence. Breyfogle does not cite to, and we could not find, caselaw stating that "prevent" in this context means to prevent any *attempt* to fight back, flee, or seek help, or that if a victim attempts to flee, attempts to seek help, or attempts to fight back, the victim is therefore not particularly vulnerable due to the presence of a child. Instead, caselaw has consistently turned on whether "[t]he child's presence resulted in an incapacitation that increased the parent's vulnerability." *State v. Dalsen*, 444 N.W.2d 582, 584 (Minn. App. 1989).

A.S.'s testimony supports the finding that the presence of her child prevented her from fighting back against, fleeing from, or seeking help against Breyfogle. A.S. stated that she did not fight back because she was afraid that such action on her part would further enrage Breyfogle, and she wanted to protect her son. That statement supports the finding that A.S. was prevented from fighting back because of the presence of a child.

Additionally, the finding that her son's presence prevented her from fleeing or otherwise seeking help is supported by A.S.'s actions, including that she focused on attempting to help her son escape, even trying to push him out the window, before she finally went to sleep with her son in the bedroom while Breyfogle slept outside the door.

These facts support the conclusions that the presence of A.S.'s son affected her actions and made her vulnerable and that she was concerned for his safety. *See State v. Hart*, 477 N.W.2d 732, 740 (Minn. App. 1991) (concluding that presence of children in home was properly considered an aggravating factor because victim was attacked in her sons' room while they were sleeping, and she was therefore "afraid to scream or struggle because her sons might awaken and be injured" and "afraid of leaving appellant alone in the home with the children"), *rev. denied* (Minn. Jan. 16, 1992). Thus, we conclude that sufficient evidence supported the jury's finding that the presence of a child prevented A.S. from fighting back against, fleeing from, or seeking help against Breyfogle, and the district court did not err by relying on that finding in departing from the presumptive sentence.

III. The district court did not err by determining that the false imprisonment was a separate behavioral incident from the assault.

A Minnesota statute requires that "if a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2020). In applying this statute, the supreme court has held that "a person may be punished for only one of the offenses that results from acts committed during a single behavioral incident and that did not involve multiple victims." *State v. Degroot*, 946 N.W.2d 354, 365 (Minn. 2020) (quotation omitted).

Whether multiple offenses "were part of a single behavioral incident depends on the facts and circumstances of the case, presenting a mixed question of law and fact." *Id.* On appeal, we review the district court's findings of fact for clear error and its application of law to the facts de novo. *Id.* To determine whether separate offenses were part of a single behavioral incident, we review "(1) whether the offense occurred at substantially the same time and place and (2) whether the conduct was motivated by an effort to obtain a single criminal objective." *Id.* The state bears the burden of establishing by a preponderance of the evidence that the conduct was not a single behavioral incident. *Id.*

The district court determined that the false imprisonment was a separate behavioral incident because

> while it occurred at the same place it was at a different time. The assault had concluded . . . and the defendant . . . had been lying in front of the bedroom door which prohibited or prevented the victim from exiting. There was a different criminal objective from the assault and the false imprisonment.

A.S. testified that "at some point" during the encounter at issue, Breyfogle became calmer and stopped physically attacking her. After Breyfogle became calmer, A.S. took her son into a bedroom and went to sleep. It was at that time that Breyfogle shut the door to the bedroom and slept by the door, effectively blocking A.S. and her son from leaving that room. A.S. further testified that when Breyfogle woke up the next morning, he said "that he was sorry . . . over and over and over and that he loved [A.S.] and he didn't mean to. And right away he wanted [her] to come up with a story to tell drug court about [her] patch and how [she] got . . . injuries to [her] face and chest."

Breyfogle argues that the district court erred by determining that the false-imprisonment offense was a separate behavioral incident from the first-degree burglary and third-degree assault. He argues that the offenses all shared a unity of time and place because they occurred in A.S.'s house on the night of June 27 and that the offenses shared a single criminal objective: to control A.S.'s behavior in a single incident of aggression. Breyfogle also argues that the state's theory of the evidence shows that the state intended the false-imprisonment charge to encompass both Breyfogle's actions during the assault to prevent A.S. from escaping the house and his actions after the assault when he lay down in front of the door to keep A.S. and her son in the bedroom.

First, the district court did not err by determining that the false imprisonment was separated by time but not by place. A.S. described how Breyfogle prevented her and her son from leaving the bedroom overnight by lying in front of the door. She described going into the bedroom only after Breyfogle was calm and had "stopped." Breyfogle had stopped assaulting A.S. before she went into the bedroom, separating the act of blocking the bedroom door from acts constituting the burglary and assault. Then Breyfogle continued to lie in front of the door for several hours while all three slept, continuing the false imprisonment but not reinitiating the assault. The delineation between when Breyfogle was irate and assaulting A.S. and a later time when he became calm and simply laid in front of the bedroom door supports the district court's finding that there was a separation of these acts by time and that therefore the false imprisonment stemmed from a second behavioral incident.

Second, the district court did not err in its determination that the conduct was not motivated by an effort to obtain a single criminal objective. Breyfogle argues that both actions were a single incident of aggression with the single criminal objective of controlling A.S. through intoxicated and aggressive behavior. But "[b]road statements of criminal purpose do not unify separate acts into a single course of conduct." *Degroot*, 946 N.W.2d at 366 (quotation omitted). "Determining whether multiple offenses are part of a single behavioral incident is not a 'mechanical' exercise, but rather requires an examination of all the facts and circumstances." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016) (quoting *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997)).

Here, A.S. stated that she only went into the bedroom, and Breyfogle only lay in front of the door once he had become calmer. Breyfogle then fell asleep in front of the door. Breyfogle's change in demeanor and the fact that he eventually fell asleep indicate that he was no longer acting with physical aggression toward A.S. These facts are distinguishable from the nonprecedential cases cited by Breyfogle in which assault and false imprisonment were determined to be part of the same behavioral incident.[2] In the

[2] Breyfogle cites several nonprecedential cases: *State v. Lindsey*, No. A13-0199, 2013 WL 6050367, at *1 (Minn. App. Nov. 18, 2013) (deeming it a single behavioral incident when the appellant pushed a knife against the victim's stomach and forced her to drive away to a more secluded area, where he then punched her); *State v. Coleman*, No. A10-667, 2011 WL 781088, at *3 (Minn. App. Mar. 8, 2011) (deeming it a singular behavioral incident when the appellant used duct tape to hold his victim down while he strangled her); *State v. Garcia*, No. A05-2304, 2007 WL 738648, at *1 (Minn. App. Mar. 13, 2007) (deeming it a single behavioral incident when the appellant forced the victim into his car, locked the doors, and drove to a rural area while repeatedly pulling over and hitting her). Moreover, our review of nonprecedential opinions is limited to their persuasive value. Minn. R. Civ. App. P. 136.01, subd. 1(c); *State v. Mayl*, 836 N.W.2d 368, 372 n.2 (Minn.

cases to which Breyfogle cites, the appellant-defendant falsely imprisoned the victim in order to control the victim *during* an assault. Here, Breyfogle lay down in front of the door after he had stopped assaulting A.S., thereby controlling the victim *after* the assault. We thus conclude that the district court did not err by determining that Breyfogle's actions in committing the assault and those involved in committing false imprisonment were not motivated by an effort to obtain a single criminal objective. The district court therefore did not err in its determination that false imprisonment was part of a second behavioral incident.

Affirmed.

App. 2013) (stating appellant's reliance on an unpublished, nonprecedential case "is not binding upon" this court).