STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1156

State of Minnesota,
Respondent,

vs.

Jacob Daniel McPheeters,
Appellant.

Filed September 18, 2023
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-20-16374

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

Mary F. Moriarty, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant seeks review of judgments of conviction for first-degree assault and unlawful possession of a firearm and argues that we should reverse and remand for a new trial. Appellant contends that the district court abused its discretion by ruling that

relationship evidence and impeachment evidence were admissible. Because the district court did not abuse its discretion by admitting either type of evidence, we affirm.

FACTS

These facts summarize the evidence received during an April 2022 jury trial. Appellant Jacob Daniel McPheeters met S.L. in 2016, and they began a romantic relationship in 2017. In July 2020, McPheeters and S.L. were living together in Bloomington. The relationship, according to S.L., "had become abusive verbally, emotionally, and physically."

During the late evening of July 23 and early morning of July 24, 2020, McPheeters and S.L. "ended up fighting." McPheeters "chase[d]" S.L. around their home while S.L. "was trying to climb over stuff to get away from him." McPheeters "pulled [S.L.] down by [her] neck." McPheeters told S.L. that they were leaving the home "to go finish this." When S.L. resisted leaving, McPheeters brandished a "black .45 . . . handgun" and "scream[ed]" at S.L., "You're going to get in the f--king car . . . [a]nd we're going to finish this." S.L. testified that she recognized the handgun. McPheeters pointed the handgun at her as he repeated his command to get in the car. S.L. "was terrified," and McPheeters dragged her to the car.

Around 2:00 a.m., McPheeters drove S.L. to see two friends, A.C. and M.E., who parked their recreational vehicle (RV) in a Bloomington hotel's parking lot. When they arrived, McPheeters, who suffered from migraines, "was expressing extreme discomfort." S.L. left the car and asked A.C. to "go check on [McPheeters]." S.L. entered the RV and said to M.E., "[P]lease don't let me in [McPheeters's] car." Fifteen to twenty minutes later,

McPheeters entered the RV and, according to S.L., "started with that, Get in the car, insistent stuff again." Then "the [handgun] got pulled out again . . . and [McPheeters] put [the handgun] in [S.L.'s] mouth" while choking her with his other hand. McPheeters "flung" S.L. to the ground.

McPheeters put the handgun in his waistband and "pulled [S.L.] out of the RV" while he was choking her. S.L. "was blacking out" but "could see that [M.E.] was behind [McPheeters], that "[M.E.] had the [handgun]," and that M.E. "was putting it in her car." S.L. "fell against the RV, and [McPheeters] went after [M.E.] . . . and started choking her." A.C. intervened, and M.E. returned to talk to S.L.

S.L. saw McPheeters in his car loading a "revolver" that S.L. had seen before. McPheeters approached and said, "[Y]our time is up." S.L. testified that McPheeters was "standing right in front of [her]" as "he put the gun against [her] side and shot [her] under [her] armpit." S.L. fell to the ground and touched her side; her "hand was covered in blood." McPheeters "picked [S.L.] up" and "put [her] in the car." McPheeters drove S.L. to the emergency department at a nearby hospital.

McPheeters helped S.L. walk into the hospital. When a nurse arrived with a wheelchair, S.L. told the nurse that her boyfriend had shot her. S.L. noticed then that McPheeters "was gone." S.L. remained in the hospital for three and a half weeks.

McPheeters fled to Wisconsin, where police arrested him and later recovered a revolver from the driver's side of McPheeters's car. Respondent State of Minnesota charged McPheeters with second-degree attempted murder under Minn. Stat. § 609.19, subd. 1(1) (2018) (count one), first-degree assault inflicting great bodily harm under Minn.

Stat. § 609.221, subd. 1 (2018) (count two), second-degree assault with a dangerous weapon inflicting substantial bodily harm under Minn. Stat. § 609.222, subd. 2 (2018) (count three), and unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2018) (count four).

After hearing arguments on pretrial motions, the district court granted the state's motion to allow evidence of two prior drug convictions to impeach McPheeters if he testified. The district court also granted the state's motion to admit testimony about a prior assault between McPheeters and S.L. as relationship evidence.

During the jury trial, the state offered testimony from S.L., a hotel employee, law-enforcement officers, and two forensic scientists. McPheeters did not testify. The jury found McPheeters not guilty of count one and guilty of counts two, three, and four. The district court sentenced McPheeters to serve concurrent prison terms of 60 months for count four and 175 months for count two.

McPheeters appeals.

DECISION

I. The district court did not abuse its discretion by admitting relationship evidence.

Evidence of prior wrongful conduct unrelated to the crime for which a person is on trial is generally inadmissible. Minn. R. Evid. 404(b). One exception to this general rule 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" or other

concerns. Minn. Stat. § 634.20 (2022); *see also State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (adopting Minn. Stat. § 634.20 as a rule of evidence). "Domestic conduct" includes "evidence of domestic abuse." Minn. Stat. § 634.20. "[F]amily or household members" include "persons who are presently residing together or who have resided together in the past." Minn. Stat. § 518B.01, subd. 2(b)(4) (2022). This evidence "is commonly referred to as relationship evidence." *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010).

Appellate courts review the admission of relationship evidence for abuse of discretion. *Id.* at 553. To establish reversible error, McPheeters "must prove that the admission of evidence was erroneous and prejudicial." *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009). Appellate courts "will reverse the district court's ruling if the error substantially influenced the jury's decision." *Id.*

Over McPheeters's pretrial objection, the district court allowed relationship evidence. S.L. testified that, one week before the July 2020 incident, she and McPheeters "got into an argument" and McPheeters "squeez[ed her] neck so hard that [she] thought he was going to crush [her] windpipe." After McPheeters let go, S.L. "threw up everywhere all over the floor and on [McPheeters]."

On appeal, McPheeters argues that the relationship evidence had "no legitimate probative value" and that "any probative value was outweighed by the potential for prejudice" because "it is possible the jury used the evidence for an improper purpose." We address each argument in turn.

A. Probative Value

McPheeters argues that the district court should have excluded the relationship evidence because "this case does not present . . . 'unique prosecution challenges'" like other cases in which relationship evidence has been admitted. McPheeters cites *McCoy*, 682 N.W.2d at 161, to support his argument. McPheeters correctly points out that *McCoy* identified some traits of domestic abuse: "Domestic 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." 682 N.W.2d at 161. The facts in *McCoy,* for example, involved a victim of domestic abuse who "could not remember what she told the police regarding [McCoy's] alleged assault," and "[n]o one else was able to provide eyewitness testimony." *Id.*

Although McPheeters's charged assault of S.L. matched only some of the "unique traits" of domestic abuse identified in *McCoy* and therefore did not present the state with the same challenges the prosecution faced in *McCoy*, we are not persuaded of McPheeters's premise. According to our caselaw, the probative value of relationship evidence does not depend on the challenges the prosecution faces. The supreme court explained in *McCoy* that, under Minn. Stat. § 634.20, "evidence of prior conduct between the accused and the alleged victim . . . may be offered to illuminate the history of the relationship, that is, to put the crime charged in the context of the relationship between the two." *Id.* at 159. The supreme court has recognized the "inherent" probative 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).

McPheeters urges that his case is distinguishable from domestic-assault cases that have allowed relationship evidence. McPheeters discusses *State v. Barnslater*, in which we determined that the district court properly allowed relationship evidence to prove a pattern of harassing conduct. 786 N.W.2d 646, 649-51 (Minn. App. 2010), *rev. denied* (Minn. Oct. 27, 2010). McPheeters argues that his case is unlike *Barnslater* because here, "the state was not required to prove a pattern of harassing conduct." We disagree with McPheeters's reading of our decision. In *Barnslater*, we stated that "[t]he admissibility of relationship evidence . . . does not depend on the particular offense charged" but whether "the evidence address[es] similar conduct by the accused against the victim of domestic abuse." *Id.* at 651 (quotation omitted).[1]

Here, S.L.'s testimony about the prior assault concerned similar conduct by McPheeters and provided context for their relationship. In *State v. Andersen*, we determined that evidence that a defendant "verbally and physically abused" a victim "earlier in their relationship" had "obvious probative value" because it "informed the jury of the nature of their relationship, the times that [the victim] felt afraid of [the defendant],

[1] McPheeters cites three additional cases and tries to distinguish them from his case. We are not persuaded. In all three cases, Minnesota courts affirmed a district court's decision to admit relationship evidence because the evidence provided context for the appellant's relationship with the victim. *See State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (determining that evidence that the defendant twice violated an order for protection was "probative of a material fact, namely the history of [the defendant and victim's] relationship"); *State v. Lindsey*, 755 N.W.2d 752, 756-57 (Minn. App. 2008) (stating that evidence establishing the relationship between the victim and the defendant has probative value), *rev. denied* (Minn. Oct. 29, 2008); *State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008) (determining that the district court did not err by admitting "extensive evidence" of a "troubled, long-term relationship" to demonstrate the context of the relationship).

and the times that [the defendant] attempted to manipulate, control, and restrain [the victim]." 900 N.W.2d 438, 441 (Minn. App. 2017). Like the relationship evidence admitted in *Andersen*, S.L.'s testimony about the prior assault provided context for her relationship with McPheeters. Thus, we conclude that the district court did not abuse its discretion in analyzing the probative value of the relationship evidence.

B. Danger of Unfair Prejudice

Relationship evidence is admissible unless the probative value is "substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury." Minn. Stat. § 634.20. "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." *Bell*, 719 N.W.2d at 641 (quotation omitted).

McPheeters argues that "any probative value" of the challenged evidence "was outweighed by the potential for prejudice." We are not convinced. "Evidence that is probative, though it may arouse the passions of the jury, will still be admitted unless the tendency of the evidence to persuade by illegitimate means overwhelms its legitimate probative force." *State v. Schulz*, 691 N.W.2d 474, 478-79 (Minn. 2005). In *Word*, we noted that the "extensive [relationship] evidence" was "dramatic and prejudicial" but that "the evidence had substantial probative value which was not clearly outweighed by the danger of unfair prejudice." 755 N.W.2d at 784. Here, we similarly conclude that the danger of unfair prejudice did not substantially outweigh the probative value of the

relationship evidence. Thus, the district court did not abuse its discretion in weighing the probative value of the relationship evidence against any unfair prejudice.

C. Harmless Error

Even if the district court abused its discretion by admitting the relationship evidence, the error was harmless. An error is harmless if "there is no reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Hormann*, 805 N.W.2d 883, 891-92 (Minn. App. 2011) (quoting *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006)), *rev denied* (Minn, Jan. 17, 2012). To determine whether the admission of relationship evidence significantly affected the verdict, appellate courts "consider [1] whether the district court provided the jury a cautionary instruction, [2] whether the State dwelled on the evidence in closing argument, and [3] whether the evidence of guilt was strong." *State v. Fraga*, 898 N.W.2d 263, 274 (Minn. 2017). We consider each factor in turn.

First, before the relationship evidence was introduced at McPheeters's trial, the district court instructed the jury that the evidence was "being offered for the limited purpose of demonstrating the nature and extent of the relationship between" McPheeters and S.L. and that the jury was "not to convict [McPheeters] on the basis of" his prior conduct. During the final jury instructions, the district court again read the cautionary instruction.

Appellate courts must "presume that juries follow instructions given by the [district] court." *Matthews*, 779 N.W.2d at 550. Minnesota courts have repeatedly upheld the admission of relationship evidence when paired with cautionary instructions. *See, e.g.*,

State v. Benton, 858 N.W.2d 535, 542 (Minn. 2015); *Andersen*, 900 N.W.2d at 441-42. Here, the district court "minimized any potential prejudice" to McPheeters by providing cautionary instructions about the relationship evidence. *Lindsey*, 755 N.W.2d at 757; *see State v. Ware*, 856 N.W.2d 719, 730 (Minn. App. 2014) ("[T]he danger of unfair prejudice in this case is low because the district court gave the jury a cautionary instruction.").

Second, the state did not dwell on the relationship evidence. The prosecuting attorney did not refer to the relationship evidence during closing argument. *See Benton*, 858 N.W.2d at 542 (determining that any error in the admission of relationship evidence was harmless where the prosecuting attorney made "sparse use of relationship evidence in closing argument").

Third, the other evidence supporting McPheeters's convictions was strong. McPheeters argues that "[t]he jury clearly questioned the state's evidence; it found McPheeters not guilty of [attempted murder]," and therefore, the jury "likely" convicted McPheeters because of the relationship evidence. We disagree. Evidence presented during trial corroborated S.L.'s testimony—namely, the ballistic analysis, which showed that the revolver found in McPheeters's car fired a bullet recovered from the RV, and S.L.'s previous statements to law enforcement, which were made around the time she was shot.

In sum, the district court did not abuse its discretion by admitting relationship evidence against McPheeters because the evidence illuminated his relationship with S.L. Alternatively, any error in admitting the relationship evidence was harmless for the reasons discussed above. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded.").

II. The district court did not abuse its discretion by ruling impeachment evidence was admissible.

"We will not reverse a district court's ruling on the impeachment of a witness by prior conviction absent a clear abuse of discretion." *State v. Hill*, 801 N.W.2d 646, 651 (Minn. 2011) (quotation omitted). "On appeal, the defendant has the burden of proving both that the trial court abused its discretion in admitting the evidence and that the defendant was thereby prejudiced." *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997).

Evidence of a defendant's prior conviction is admissible for impeachment purposes when the prior crime is punishable by more than one year in prison and the probative value of the evidence outweighs the prejudicial effect. Minn. R. Evid. 609(a)(1). District courts exercise discretion under this evidentiary rule and, in doing so, must consider the five factors established in *State v. Jones*: "(1) the impeachment value of the prior crime, (2) the date of the conviction and the defendant's subsequent history, (3) the similarity of the past crime with the charged crime . . . , (4) the importance of [the] defendant's testimony, and (5) the centrality of the credibility issue." 271 N.W.2d 534, 538 (Minn. 1978).

In its pretrial ruling allowing the state to impeach McPheeters with his prior convictions if he chose to testify, the district court determined that factor one weighed against admission because although the prior convictions were "felonies, that is the extent of their impeachment value." The district court also determined that factor four "weigh[ed] against admission." The other three factors, however, supported admission. The district court concluded that "on balance, the two drug cases weigh in favor of admission" and allowed them.

On appeal, McPheeters does not challenge the district court's determination on any individual factor; rather, McPheeters seems to argue that the district court erred in balancing the five factors. McPheeters argues that factors one and four weigh against admitting the impeachment evidence, which aligns with the district court's reasoning. McPheeters, however, does not address factors two, three, or five, which the district court determined supported admitting the impeachment evidence.

Because McPheeters does not discuss three of the five *Jones* factors and we discern no abuse of discretion in the district court's balancing of these factors, we conclude that the district court did not abuse its discretion in ruling the impeachment testimony was admissible. Thus, we need not discuss whether any error was harmless.

Affirmed.