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STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1517

State of Minnesota,
Respondent,

vs.

Terence Duane Maurstad,
Appellant.

Filed July 25, 2011
Affirmed
Muehlberg, Judge*

Clay County District Court
File No. 14-CR-09-2485

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Pamela L. Harris, Assistant County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Klaphake, Judge; and Muehlberg, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

MUEHLBERG, Judge

Appellant challenges his convictions of two counts of domestic assault, arguing that the district court abused its discretion by (1) allowing abuse victim to testify regarding prior incidents of abuse committed by appellant and (2) denying appellant's request that the jury be instructed on the defense of reasonable use of force toward a child. Because (1) the evidence was properly admitted under Minn. Stat. § 634.20 (2008) and (2) the reasonable-use-of-force-toward-a-child defense is not applicable to a domestic-assault charge, we affirm.

FACTS

Appellant Terence Duane Maurstad and M.L.P. began a romantic relationship in 2000. In January 2001, M.L.P. gave birth to D.P., appellant's son. When M.L.P. was approximately six-months pregnant with D.P., appellant began to fight with M.L.P. She testified that appellant verbally abused, pushed and shoved M.L.P., and threw her on the bed. After D.P. was born, this abuse continued. M.L.P. testified that appellant hit her, pulled her hair, and strangled her on at least one occasion. She obtained an order for protection against appellant, but he did not abide by the order. When D.P. was 10 months old, appellant moved out of the home.

Appellant returned to D.P.'s life on a regular basis in August 2008 when D.P.—then seven years old—wanted to meet his father. Around the same time, appellant and M.L.P. resumed their relationship. M.L.P. testified that appellant did not understand why D.P. would look to his mother for reassurance when appellant would tell him to do

something. She testified that appellant was strict with D.P. and over time appellant began hitting him when D.P. wouldn't follow appellant's instructions. M.L.P. recalled that when she stuck up for D.P., she "got smacked a couple times."

On the morning of June 1, 2009, D.P. was getting ready for school when appellant told him to wet his hair down because he had a "rooster tail." M.L.P. told D.P. that he did not have to wet his hair down because "it [didn't] matter how much water you put on his head, it was how his hair was cut." Appellant then hit D.P. on the head and face. When M.L.P. tried to protect D.P., appellant hit and punched her on the side of the head.

Appellant was charged with two counts of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2008). At trial, appellant requested that the jury be instructed on the affirmative defense of reasonable force toward a child. The district court denied appellant's requested jury instruction. Following the trial, the jury found appellant guilty of both counts. Appellant was sentenced to 39 months on the first count (felony domestic assault on M.L.P.) and one year and one day on the second count (felony domestic assault on D.P.), to run consecutively. This appeal follows.

D E C I S I O N

Appellant claims two errors on appeal. First, appellant argues that the district court erroneously allowed M.L.P. to testify regarding prior incidents of domestic abuse. Second, appellant argues that the district court impermissibly denied his request for the reasonable-use-of-force-toward-a-child jury instruction. We address each in turn.

I.

Evidentiary rulings generally rest within the sound discretion of the district court and, a reviewing court will not reverse a district court's evidentiary ruling absent a clear abuse of that discretion. *State v. Palubicki*, 700 N.W.2d 476, 485 (Minn. 2005). "In the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the appellate court is bound by the result." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997).

The district court admitted the evidence as relationship evidence under Minn. Stat. § 634.20. The statute provides that:

> Evidence of similar conduct by the accused against the victim of domestic abuse . . . is admissible 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. "Similar conduct" includes, but is not limited to, evidence of domestic abuse . . . . "Domestic abuse" . . . [has] the meaning[] given under section 518B.01, subdivision 2.

Minn. Stat. § 634.20. Despite the similarities between evidence admitted under this section and evidence admitted under Minn. R. Evid. 404(b), "the stringent procedural requirements of rule 404(b) do not apply to section 634.20 evidence." *State v. Meyer*, 749 N.W.2d 844, 849 (Minn. App. 2008). For example, the state is not required to provide notice of the evidence, the state is not required to prove the similar conduct by clear and convincing evidence, and the district court is not required to "independently consider the state's need for such evidence as 'the need for section 634.20 evidence is naturally considered as part of the assessment of the probative value versus prejudicial

effect of the evidence.'" *Id.* (quoting *State v. Bell*, 719 N.W.2d 635, 639 (Minn. 2006)). Thus, evidence is admissible under Minn. Stat. § 634.20 so long as "(1) it is similar conduct by the accused, (2) it is perpetuated 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." *Id.*

Appellant argues that the district court abused its discretion by admitting the evidence for two reasons: (1) that the evidence is not proper relationship evidence under the statute and (2) the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

A. Status as relationship evidence

Appellant argues that the statute does not allow for the admission of "general, nonspecific, and vague allegations of prior domestic abuse." We disagree.

It is undisputed that appellant and M.L.P. meet the statutory definition of "family or household members." *See* Minn. Stat. § 518B.01, subd. 2(b)(4) (2008) (defining "family or household members" as "persons who are presently residing together or who have resided together in the past"). When an individual inflicts physical harm, bodily injury, assault, or the infliction of fear of any of these against a family or household member, the individual has committed domestic abuse. *Id.*, subd. 2(a) (2008).

Contrary to appellant's assertion, the statute does not require specific, corroborated evidence of the prior conduct. Rather, the plain language of the statute provides for the admission of evidence of "similar conduct," including evidence of domestic abuse. Minn. Stat. § 634.20. In the present case, appellant challenges the

admission of M.L.P.'s testimony that appellant pushed her, shoved her on the bed while she was pregnant with D.P., strangled her, pulled her hair, called her names, intimidated her, and threatened to kill her and her daughter from a previous relationship. All of the challenged evidence qualifies as evidence of domestic abuse, and is therefore "similar conduct" under Minn. Stat. § 634.20.

Appellant relies on a series of cases in which appellate courts have affirmed the admission of specific evidence of prior domestic abuse, such as allegations of assaults on a specific date, photographs of a victim after an alleged assault, and prior convictions for domestic assault. *See State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (allowing admission of evidence of assault on a specific date); *State v. Valentine*, 787 N.W.2d 630, 635, 638 (Minn. App. 2010) (allowing admission of photographic evidence of prior assaults), *review denied* (Minn. Nov. 16, 2010); *State v. Barnslater*, 786 N.W.2d 646, 651-53 (Minn. App. 2010) (allowing admission of three prior convictions of domestic assault), *review denied* (Minn. Oct. 27, 2010). But his reliance on these cases is misplaced, as they do not stand for the opposite proposition—that *only* specific evidence is admissible under the statute. The fact that M.L.P. did not provide specific details of the prior assault does not negate her testimony's status as relationship evidence. The state is not required to establish the relationship evidence as clear-and-convincing evidence of domestic abuse. *State v. Cross*, 577 N.W.2d 721, 726 n.2 (Minn. 1998) (noting that the legislature has expressed an intent to remove relationship evidence from the heightened clear-and-convincing standard of Minn. R. Evid. 404(b)).

B. Probative-value balancing test

Appellant next argues that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. We disagree.

When balancing probative value against 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). Appellate courts "have on numerous occasions recognized the inherent value of evidence of past acts of violence committed by the same defendant against the same victim." *Id.*

In the present case, the district court instructed the jury that the evidence was being offered for the limited purpose of assisting the jury in determining whether appellant committed the acts that led to the charges in the present case and that the jury was not to convict appellant on the basis of prior occurrences, as doing so might result in unjust double punishment. The district court's cautionary instructions "lessened the probability of undue weight being given by the jury to the evidence." *State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998). On this record, the district court therefore did not err by determining that the probative value of the testimony was not substantially outweighed by the danger of unfair prejudice.

Because the challenged portions of M.L.P.'s testimony (1) detailed similar conduct by the appellant, (2) that was perpetuated 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, the district court did not abuse its discretion by denying appellant's motion to exclude the evidence.

II.

We review a district court's refusal to give a requested jury instruction for an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996).

At trial, appellant requested that the jury be instructed on the permitted use of reasonable force toward a child in accordance with the pattern jury instruction. The pattern instruction, as proposed by appellant, provides that:

> The defendant is not guilty of a crime if the defendant used reasonable force upon or toward [the child] without the child's consent when circumstances existed, or the defendant reasonably believed circumstances existed, as follows: [when used by a parent, legal guardian, teacher, or other caretaker of a child or pupil in the exercise of lawful authority to restrain or correct the child or pupil] . . . .
>
> The burden of proof is on the State to prove beyond a reasonable doubt that such a circumstance did not exist, and that the defendant did not reasonably believe it to exist.[1]

10 *Minnesota Practice*, CRIMJIG 13.86 (2006) (second brackets in original). The footnote at the end of the pattern instruction clarifies the burden of proof explaining that, as an affirmative defense, the burden is on the state "once the defendant has produced sufficient evidence as a matter of law to make the defense an issue in the case." *Id.* n.1.

The comments to the instruction list the statutes to which the instruction is applicable including false imprisonment, malicious punishment of a child, neglect or endangerment of a child, and maltreatment of minors. *Id.* cmt. Domestic abuse and assault are not among the listed applicable statutes. *Id.* Similarly, appellant's counsel at

trial agreed that the instruction was "not necessarily applicable" to the charged offense. Because the jury instruction on reasonable use of force toward a child is not applicable to the charge of domestic assault in violation of Minn. Stat. § 609.2242, the district court did not abuse its discretion by declining to give the pattern instruction.

Even if the requested instruction does apply to the crime of domestic assault, the district court nonetheless did not abuse its discretion by denying appellant's request in the present case. As an affirmative defense, appellant bore the burden of proving the reasonable-use-of-force-toward-a-child defense by a preponderance of the evidence. *See State v. Brechon*, 352 N.W.2d 745, 749 (Minn. 1984) (concluding an affirmative defense requires the defendant to go forward with evidence raising defense and shoulder persuasion burden of establishing defense by preponderance of evidence). Despite this burden, appellant did not present any evidence that he was a disciplinarian for the child. M.L.P. did acknowledge that appellant had "a lot of rules for [D.P.]" such as making his bed and that appellant would hit D.P. if the child did not follow appellant's instructions. However, appellant failed to establish that the incident that led to the present charges was in any way related to discipline of the child. On this record, the district court did not abuse its discretion by determining that there was insufficient evidence to give rise to the affirmative defense and declining to give the requested instruction.

Affirmed.