STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1580

State of Minnesota,
Respondent,

vs.

Juan Ortega,
Appellant.

Filed October 9, 2012
Affirmed
Chutich, Judge

Steele County District Court
File No. 74-CR-10-2344

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Daniel A. McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Susan Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Stauber, Judge; and Cleary, Judge.

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

CHUTICH, Judge

On appeal from his conviction of terroristic threats, appellant Juan Ortega argues that the district court erred in admitting relationship evidence under Minn. Stat. § 634.20 (2010). Because the district court properly admitted the evidence, we affirm.

FACTS

On November 6, 2010, appellant Juan Ortega and J.O. were married, but were living separately. J.O. lived in Owatonna with her four children. Around 6:00 p.m., Ortega began calling J.O. and said that he wanted to come over to her house. J.O. could tell that Ortega had been drinking and told him not to come. Ortega told J.O. that she "better call the cops" because he was going to come anyway. Ortega also said that he was "gonna shoot up the house" and that the cops better have their guns and better get to him before he got to her. J.O. understood Ortega's remarks to mean that Ortega intended to kill her.

Shortly after Ortega ended the call, a van dropped Ortega off in J.O.'s driveway. J.O. called the police when she saw Ortega get out of the van. Ortega tried to kick in the front door and threw a full beer bottle through a bedroom window, shattering the glass and scattering it over the floor and J.O.'s bed. J.O. and her children fled to a bathroom in the basement to hide.

After about five minutes, the police arrived and searched the premises for Ortega. The police found Ortega lying face down in the backyard. When the officers approached Ortega, he stood up and began shaking a nearby chain-link fence, yelling "come on, shoot

me, come on, shoot me," to the officers. It took several officers and a dog to subdue Ortega before he was taken into custody.

At Ortega's trial, J.O. testified about the events of November 6 and the jury also listened to her 911 call. J.O. further testified that Ortega left her numerous threatening phone messages one week earlier, on October 30, 2010. J.O. said that Ortega called her a "b-tch," "wh-re," and "sl-t" and that Ortega said he was "gonna slap the sh-t out of" her and that he would "strangle [her] ass" if she tried to "pick up the kids." The district court gave a limiting instruction about the relationship evidence when the evidence was offered and again in its final jury instructions. Ortega did not testify at trial or present any other witnesses.

The jury found Ortega guilty of terroristic threats, criminal damage to property, and obstructing legal process, but acquitted him of first-degree attempted burglary. This appeal followed.

D E C I S I O N

Ortega argues that the district court abused its discretion by allowing J.O. to testify about the October 30 phone calls. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Minn. Stat. § 634.20 provides:

> Evidence of similar conduct by the accused against the victim of domestic abuse, or against other family or household members, 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.

Ortega contends that the evidence was not admissible because he did not testify at trial. As the state notes, however, Minn. Stat. § 634.20 does not limit the admissibility of relationship evidence to cases where the defendant testifies. Under section 634.20, the evidence of similar conduct by the accused against the victim of domestic abuse is admissible unless "the probative value of the evidence is substantially outweighed by the danger of unfair prejudice." *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006).

Here, J.O.'s testimony was probative of the history of J.O. and Ortega's relationship because it demonstrated similar threatening conduct by Ortega within a week of the charged events, and the evidence was relevant to Ortega's intent to terrorize J.O. Additionally, although Ortega did not testify, his attorney attacked J.O.'s credibility in closing, telling the jury that J.O.'s testimony was not believable. Thus, the district court properly reasoned that the evidence "create[d] a background and family history to provide the jury some information as to the context of" J.O. and Ortega's relationship. *See State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (holding that district court did not abuse its discretion in allowing relationship "evidence that, if believed by the jury, could have assisted the jury by providing a context with[in] which it could better judge the credibility of the principals in the relationship").

The district court further found, and we agree, that the probative value was not substantially outweighed by the danger of unfair prejudice. "[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." *Bell*, 719 N.W.2d at 641 (quotation omitted). J.O.'s testimony about the October 30 phone calls was brief and not particularly inflammatory. Moreover, the district court minimized any potential prejudice by giving the jury a cautionary instruction when the evidence was offered and in the final jury instructions. *State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (concluding that the district court's limiting instruction regarding the relationship evidence lessened the likelihood of the jury according undue weight to the evidence), *review denied* (Minn. Oct. 29, 2008); *see also State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005) ("It is presumed that the jury follows the court's instructions.").

Finally, Ortega contends that the relationship evidence threatened his right to a fair trial because "its admission lacks the procedural safeguards governing the admission of *Spreigl* evidence." The supreme court addressed a similar argument in *State v. McCoy*, 682 N.W.2d 153 (Minn. 2004). There, the court noted that *Spreigl* evidence often involves an unrelated crime against a different victim, whereas relationship evidence is offered to "illuminate the history of the relationship . . . to put the crime charged in the context of the relationship between [the accused and the victim]." *Id.* at 159. Thus, relationship evidence does not require the same procedural safeguards as *Spreigl* evidence. *Id.* at 160.

On this record, we conclude that the district court did not abuse its discretion. The district court considered the factors required by Minn. Stat. § 634.20 and properly admitted the relationship evidence.

Affirmed.