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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1953**

State of Minnesota,
Respondent,

vs.

Clark Taylor,
Appellant.

**Filed October 1, 2012
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. 62-CR-11-437

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

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

David Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges his convictions of domestic assault by strangulation, arguing that the district court abused its discretion in evidentiary rulings and erred by denying

appellant's motion for a mistrial based on a state's witness's violation of a pretrial agreement excluding evidence that appellant was on parole at the time of the charged offense. We affirm.

FACTS

In 2011, appellant Clark Taylor was charged with two counts of domestic assault by strangulation in violation of Minn. Stat. § 609.2247, subd. 2 (2010), based on allegations by T.R., who had been dating Taylor, that he put his arm on her neck, causing her to lose consciousness and, the next day, choked her on a public street.

At trial, Taylor did not object to the state's introduction of evidence that Taylor had impeded T.R.'s breathing on five or six occasions prior to the charged offenses. But the district court also admitted, over Taylor's objection, evidence of a 2001 incident in which a neighbor saw Taylor grab his fleeing former girlfriend by the throat and pull her back into his house. An officer observed evidence that the woman had been hit in the face, resulting in charges to which Taylor pleaded guilty. The state also introduced evidence of Taylor's two prior felony convictions for drug-related offenses.

During direct examination, Taylor's parole officer testified that Taylor failed to call him on the night of the street-choking incident and that the call was required as a condition of Taylor's parole. This testimony violated a pretrial agreement excluding evidence that Taylor was on parole at the time of the charged offenses, but the district court denied Taylor's motion for a mistrial based on the violation and instead gave a curative instruction to the jury.

The jury found Taylor guilty of both charges. The district court imposed consecutive 15-month prison sentences, and this appeal followed.

D E C I S I O N

On appeal from his convictions, Taylor argues that the district court abused its discretion by admitting evidence of his assault of a prior girlfriend and by admitting evidence of his drug-related convictions, entitling him to a new trial. Taylor also asserts that the district court abused its discretion by denying his motion for a mistrial.

A. Standard of review

1. Relationship evidence

The district court's decision to admit relationship evidence under Minn. Stat. § 634.20 (2010) in a domestic-abuse prosecution is reviewed for an abuse of discretion. *See State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). If the district court erred by admitting evidence, this court must determine whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994). If there is a reasonable possibility that the verdict might have been more favorable to the defendant without the evidence, then the error is prejudicial. *Id.*

2. Impeachment with prior convictions

A district court's ruling on the impeachment of a witness by prior conviction is reviewed under a clear abuse-of-discretion standard. *State v. Ihnot*, 575 N.W.2d 581, 584

(Minn. 1998). Whether the probative value of prior convictions outweighs the prejudicial effect is a matter within the discretion of the district court. *State v. Graham*, 371 N.W.2d 204, 208 (Minn. 1985). The district court’s decision will not be reversed absent a clear abuse of discretion. *Id.* at 209. To prevail, an appellant must show error and the prejudice resulting from the error. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

3. Denial of motion for mistrial

The denial of a motion for a mistrial is reviewed for an abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003). When reviewing for an abuse of discretion, this court considers the entirety of the trial, including the mitigating effects of a curative instruction. *See State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006).

B. Admission of relationship evidence

Taylor acknowledges that evidence about his relationship with T.R. was admissible under Minn. Stat. § 634.20, which provides for the admission of

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

Taylor, however, argues that only conduct against T.R. is admissible under the statute and that the district court abused its discretion by admitting evidence of his similar conduct against a former girlfriend. This argument ignores the plain language of the statute permitting evidence of similar conduct against “other family or household members” and the incorporation into the statute of the broad definition of “family or

household members” contained in Minn. Stat. § 518B.01 (2010). Taylor does not argue that his former girlfriend does not meet the definition of “family or household member,” which includes “persons involved in a significant romantic or sexual relationship.” Minn. Stat. § 518B.01, subd 2(b)(7). Additionally, this court has previously rejected Taylor’s argument for limiting relationship evidence to conduct against the victim or the victim’s family or household members. *See State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010) (holding that “the phrase ‘other family or household members’ refers to the accused’s family or household members”), *review denied* (Minn. Nov. 16, 2010). We find no merit in Taylor’s argument that relationship evidence is restricted to conduct against the victim.

Taylor also argues that the district court abused its discretion by admitting evidence of his domestic abuse against his former girlfriend because any probative value of this evidence is outweighed by its prejudicial effect. “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.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted). Evidence of a defendant’s conduct in relationships defined by the statute “sheds light on how [he] interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” *Valentine*, 787 N.W.2d at 637. Because the evidence demonstrates how Taylor treated a former girlfriend, it was also probative of his relationship with T.R., particularly because he challenged her credibility. *See State v. Lindsey*, 755 N.W.2d 752, 756-57 (Minn. App.

2008) (holding that such evidence was probative where credibility of the victim was at issue), *review denied* (Minn. Oct. 29, 2008). And the district court properly cautioned the jury about the appropriate use of the relationship evidence. The district court did not abuse its discretion by determining that the probative value of the relationship evidence in this case was not outweighed by its prejudicial effect.

C. Impeachment with evidence of prior felony offenses

The district court allowed the state to introduce evidence of Taylor’s two felony drug-related convictions for impeachment. Taylor argues that any impeachment value of these convictions was substantially outweighed by the prejudicial effect of this evidence. When considering whether the probative value of evidence of a defendant’s prior convictions outweighs the prejudicial effect of admitting the evidence, the district court must consider the following factors, commonly known as the *Jones* factors:

- (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 (the greater the similarity, the greater the reason for not permitting use of the prior crime to impeach), (4) the importance of defendant’s testimony, and (5) the centrality of the credibility issue.

Ihnot, 575 N.W.2d at 586 (quoting *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978)).

The district court concluded that the felony drug-related convictions had some impeachment value under caselaw establishing that evidence of any felony conviction is probative of a witness’s credibility because it allows the jury “to see the ‘whole person,’” which aids the jury in evaluating the truth of that person’s testimony. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993) (quoting *State v. Brouillette*, 286 N.W.2d 702, 707

(Minn. 1979)) (other quotation omitted). Taylor urges this court to “resist the temptation to use the ‘whole person’ rationale to rubber-stamp the admission of prior conviction evidence that, in all honesty, has no impeachment value,” but our review is limited to determining whether the district court abused its discretion in admitting evidence of prior convictions in this case. Given the extensive caselaw that recognizes the impeachment value of evidence of the “whole person,” it is not possible to conclude that the district court abused its discretion by finding some impeachment value under this analysis. The first factor weighs in favor of admission.

Both of the convictions were within ten years of the charged offenses, and, as the district court noted, Taylor had been incarcerated for part of the time between the convictions and the charged offenses. The second factor therefore slightly favors admission or is neutral.

The drug convictions are not at all similar to the charges being tried, so the third factor does not weigh against admission. *See State v. Lloyd*, 345 N.W.2d 240, 247 (Minn. 1984) (noting that similarity of the prior convictions to the charged crime weighs against admission because of the danger that the jury may use the evidence substantively, rather than for impeachment only).

When “credibility is a central issue in the case, the fourth and fifth *Jones* factors weigh in favor of admission of the prior convictions.” *State v. Pendleton*, 725 N.W.2d 717, 729 (Minn. 2007) (quotation omitted). The district court, however, concluded that because Taylor’s testimony was the only way for him to get his story to the jury, the fourth factor weighed against admission, but because credibility was central to the case,

the fifth factor weighed in favor of admission. Because the district court did not abuse its discretion by concluding that only one of the *Jones* factors weighed against admission, the district court did not abuse its discretion in admitting Taylor's drug-related convictions for impeachment purposes.

D. Denial of motion for mistrial

Taylor also argues that the district court committed reversible error by denying his motion for a mistrial after a state's witness violated the pretrial order to exclude evidence that Taylor was on parole at the time he committed the charged offenses. The state called Taylor's parole officer to testify that on the date of the second charged offense, Taylor failed to make a scheduled telephone call. The state argued that this testimony corroborated part of T.R.'s testimony about the assault that occurred that night. Taylor agreed not to object to testimony from his parole officer if all evidence indicating that Taylor was on parole at the time was excluded. The state agreed. During his testimony, however, the parole officer, when asked if he and Taylor had agreed that Taylor would call him at 10:30 p.m. on the night in question, responded: "It's a stipulation of his parole."

Taylor moved for a mistrial. The district court denied the motion and offered a curative instruction, reasoning that the reference, "though unfortunate, was not so overly prejudicial in and of itself to require a mistrial." Taylor, after consultation with counsel, consented to the curative instruction. Taylor now argues that the district court abused its discretion by denying the mistrial motion because the testimony about parole was highly prejudicial and the curative instruction was insufficient to correct the harm.

Evidence that a defendant was on parole at the time of commission of a charged offense is generally inadmissible. *See* Minn. R. Evid. 404(b) (providing that evidence of other crimes or bad acts is inadmissible to prove character and action in conformity); *State v. Hjerstrom*, 287 N.W.2d 625, 627 (Minn. 1979) (discussing impropriety of admitting evidence of defendant’s prior criminal record). The erroneous admission of such evidence, however, generally does not warrant a new trial when it is “of a passing nature, or [when] the evidence of guilt is overwhelming.” *State v. Clark*, 486 N.W.2d 166, 170 (Minn. App. 1992) (quotations omitted). Striking the evidence from the record and instructing the jury to disregard the evidence also help to cure the erroneous admission of such evidence. *State v. Johnson*, 291 Minn. 407, 415, 192 N.W.2d 87, 92 (1971); *see also State v. Gatson*, 801 N.W.2d 134, 151 (Minn. 2011) (stating that there is a presumption that the jury follows curative instructions).

“A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the motion had not occurred.” *Manthey*, 711 N.W.2d at 506 (quotation and alteration omitted). The testimony that Taylor was on parole was of a passing nature, the district court gave a curative instruction, and the evidence that Taylor committed the offenses charged was strong. On this record, we conclude that there is no reasonable probability that the outcome of the trial would have been different had the single reference to parole not occurred. The district court did not abuse its discretion by denying Taylor’s motion for a mistrial.

Affirmed.