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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2255**

State of Minnesota,
Respondent,

vs.

Vincent Edward Cornell,
Appellant.

**Filed November 19, 2012
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-10-53820

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Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and Collins,
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.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his first-degree-arson conviction, arguing that the district court abused its discretion by admitting (1) relationship evidence under Minn. Stat. § 634.20 (2010) that appellant threatened to burn down the victim's home approximately one month before it burned down and (2) *Spreigl* evidence under the immediate-episode-evidence exception that approximately two hours before the victim's home burned down appellant threatened to kill her or slit her throat. We affirm.

FACTS

Respondent State of Minnesota charged appellant Vincent Cornell on November 18, 2010, with first-degree arson of B.H.'s home under Minn. Stat. § 609.561, subd. 1 (2010). At trial, the district court admitted section 634.20 relationship evidence that, approximately one month before B.H.'s home burned down, Cornell threatened to burn down B.H.'s home. The court also admitted *Spreigl* evidence under the immediate-episode-evidence exception that, approximately two hours before the fire, Cornell threatened B.H., as follows: "I will slit your throat' or 'kill you."

B.H. testified that Cornell was "[u]nstable, abusive, [and] controlling"; Cornell had "anger issues"; and when Cornell became angry he was "[s]cary." Approximately one month before B.H.'s home burned down, Cornell threatened to burn it down. On October 27, 2010, during a phone conversation approximately two hours before B.H.'s home burned down, Cornell was "the angriest [that B.H. had] ever heard him"; he told her that he was "gonna kill [her], slit [her] throat," and that he was coming to her home.

A deputy fire marshal testified that the fire that occurred in B.H.'s home was set “[i]ntentional[ly] with ignitable liquid” and that Cornell’s boots smelled like gasoline when Detective Andrew Claypool arrested him the day after the arson. A forensic scientist confirmed that the boots that Cornell was wearing when arrested had “a strong amount of gasoline.” Cell phone records indicated that Cornell was within approximately two miles of B.H.’s home when the fire occurred. After the fire, B.H.’s home was a 90% loss. Although the basement and B.H.’s bedroom had only smoke damage, “the rest of the house was completely charred and black and melted.”

A jury convicted Cornell of first-degree arson.

This appeal follows.

D E C I S I O N

Admissibility of Arson-Threat Evidence as Relationship Evidence

Cornell challenges the district court’s admission of section 634.20 relationship evidence that, approximately one month before the arson, he threatened to burn down B.H.’s home. Admissible section 634.20 relationship evidence includes “[e]vidence of similar conduct by the accused against the victim of domestic abuse” that has probative value that is not “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.” *Cf. State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (“[W]e expressly adopt Minn. Stat. § 634.20 as a rule of evidence for the admission of evidence of similar conduct by the accused against the alleged victim of domestic abuse.”). The purpose of admitting section 634.20 relationship evidence is “to

illuminate the history of the relationship” between the accused and the alleged victim and “to put the crime charged in the context of the relationship between the two.” *Id.* at 159. A district court’s admission of section 634.20 relationship evidence is subject to abuse-of-discretion review. *State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010).

Similar-Conduct and Domestic-Abuse Evidence

Cornell challenges the admissibility of his home-burning threat on the ground that the threat does not constitute domestic abuse under section 634.20. His argument is unpersuasive.

One requirement of admissible section 634.20 relationship evidence is that it be “[e]vidence of similar conduct,” which section 634.20 defines as including “evidence of domestic abuse.” Section 634.20 defines “domestic abuse” as set forth in Minn. Stat. § 518B.01, subd. 2 (2010), which includes “terroristic threats, within the meaning of section 609.713.” Although no record evidence indicates that the state charged Cornell for making a terroristic threat against B.H. for the home-burning threat, “[t]he applicable definition of ‘domestic abuse’ focuses on the defendant’s conduct rather than on a list of offenses that represent ‘domestic abuse.’” *State v. Barnslater*, 786 N.W.2d 646, 651 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010).

A person makes a terroristic threat in violation of Minn. Stat. § 609.713 (2010) by “threaten[ing], directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror.” The term “‘crime of violence’ has the meaning given ‘violent crime’ in section 609.1095, subdivision 1, paragraph (d),” which includes in its definition first-degree arson under

section 609.561. Minn. Stat. § 609.713. A person commits first-degree arson by, “unlawfully by means of fire . . . , intentionally destroy[ing] or damag[ing] any building that is used as a dwelling at the time the act is committed, whether the inhabitant is present therein at the time of the act or not.” Minn. Stat. § 609.561, subd. 1.

We conclude that Cornell’s home-burning threat constituted domestic abuse under section 634.20 because it constituted a terroristic threat to commit first-degree arson of B.H.’s dwelling under section 609.561, subdivision 1. Cornell’s intent or, at least, reckless disregard, may be inferred from Cornell’s direct communication of that threat to B.H. *See State v. Schweppe*, 306 Minn. 395, 400–01, 237 N.W.2d 609, 614 (1975) (concluding that “undenied testimony . . . that defendant uttered his threats in the presence of, and by conversing with, friends and acquaintances of [the victim] . . . implies, and clearly would support, a finding that defendant knew, or had reason to know, and thus intended that his threats to kill [the victim] would be communicated to him” or at least “recklessly risked the danger” of such communication and consequent terror).

Unfair Prejudice or Needlessly Cumulative

Section 634.20 relationship evidence is inadmissible if “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. “Evidence that helps to establish the relationship between the victim and the defendant or which places the event in context bolsters its probative value.” *State v. Kennedy*, 585 N.W.2d 385, 392 (Minn.

1998); *see also State v. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008) (quoting and applying rule stated in *Kennedy* to section 634.20 relationship evidence), *review denied* (Minn. Oct. 29, 2008). “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) (applying rule to section 634.20 relationship evidence).

In light of *Kennedy*, evidence that Cornell threatened to burn down B.H.’s home has a bolstered probative value because it helps to establish the relationship between B.H. and Cornell and places the subsequent arson in context. 585 N.W.2d at 392. Cornell appears to challenge the probative value of the evidence by arguing that “whether [Cornell] even made the statement is highly questionable.” But B.H. testified that the threat occurred and that she failed to report Cornell’s abuse of her to the police due to her fear of him, and the jury was free to credit or discredit that testimony. *See State v. McCoy*, 668 N.W.2d 425, 430 (Minn. App. 2003) (“Because the only other evidence of the prior conduct mentioned by the state . . . was based entirely on information provided by [the alleged domestic-abuse victim], a determination of the weight of that evidence requires an assessment of her credibility. This is a task for which the district court is best suited.”), *rev’d on other grounds*, 682 N.W.2d 153 (Minn. 2004).

Cornell argues that the evidence persuades by illegitimate means because the evidence “allowed the jury to infer” that Cornell burned down B.H.’s home “because [Cornell] . . . allegedly threatened to do so in the past.” But any danger of the jury making

such an inference does not substantially outweigh the evidence's bolstered probative value. Cornell asserts that the evidence is "unnecessary," but we are not persuaded that the state acted unnecessarily by offering evidence that Cornell threatened to burn down B.H.'s home approximately one month before, as the state alleged, Cornell burned down B.H.'s home.

We conclude that the district court did not abuse its discretion by admitting evidence of Cornell's home-burning threat as section 634.20 relationship evidence.

Admissibility of Violent-Threat Evidence as Immediate-Episode Evidence

Cornell challenges the district court's admission of immediate-episode evidence that, approximately two hours before the arson, Cornell threatened to B.H., "I will slit your throat' or 'kill you.'" "Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). But such evidence, "also called *Spreigl* evidence, may be admitted for limited, specific purposes." *State v. Fardan*, 773 N.W.2d 303, 315 (Minn. 2009); accord Minn. R. Evid. 404(b). "The overarching concern behind excluding such evidence is that it might be used for an improper purpose, such as suggesting that the defendant has a propensity to commit the crime or that the defendant is a proper candidate for punishment for his or her past acts." *Fardan*, 773 N.W.2d at 315.

"[T]o prevail on a claim that a trial court improperly admitted evidence under Rule 404(b), the defendant has the burden to show the admission was both erroneous and prejudicial." *State v. Brown*, 815 N.W.2d 609, 619 (Minn. 2012) (quotation omitted). Appellate courts review "the district court's decision to admit *Spreigl* evidence for an

abuse of discretion.” *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). A district court abuses its discretion by admitting *Spreigl* evidence when whether to admit the evidence “is a close call.” *State v. Clark*, 738 N.W.2d 316, 347 (Minn. 2007).

Spreigl evidence is admissible if it is, among other things, “relevant and material to the state’s case” and has “probative value . . . not . . . outweighed by its potential prejudice to the defendant.” *Ness*, 707 N.W.2d at 686. Cornell challenges the admissibility of evidence of his violent threat to B.H. on the grounds that the district court erroneously admitted it as immediate-episode evidence and because the probative value of the evidence is outweighed by its potential prejudice to Cornell.

Immediate-Episode Evidence

Immediate-episode evidence is a narrow exception to the general character evidence rule. . . . [I]mmediate episode evidence is admissible where two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving the other, *or* where evidence of other crimes constitutes part of the *res gestae*.

State v. Riddley, 776 N.W.2d 419, 425 & n.2 (Minn. 2009) (emphasis added) (quotation omitted) (noting that “[r]es gestae means the events at issue, or other events contemporaneous with them” (quotation omitted)).

Cornell concedes that his threat to B.H. occurred “within a short time period” before the arson but argues that his threat is inadmissible as immediate-episode evidence because the threat has an insufficient causal connection to the arson. We disagree.

Immediate-episode evidence requires not only a “close . . . temporal connection” but also a “close causal . . . connection.” *Id.* at 425. In *State v. Nunn*, the supreme court

concluded that a sufficient causal connection existed between a defendant's kidnapping of one person and subsequent murder of another person because "the circumstances of the [kidnapping] were *related* to [the defendant's] motive" to murder the other person, even though the events that occurred during the kidnapping "were not by themselves the basis for [the defendant's] motive." 561 N.W.2d 902, 904–05, 908 (Minn. 1997); *see also State v. Kendell*, 723 N.W.2d 597, 608–09 (Minn. 2006) (concluding that evidence of defendant's murder in one apartment unit "would have been admissible as 'immediate episode' evidence" in a separate trial for defendant's murder in an adjacent apartment unit because the evidence of defendant's first murder was relevant to prove defendant's identity and motive for the second murder—to avoid apprehension for the first murder); *State v. Martin*, 293 Minn. 116, 126–28, 197 N.W.2d 219, 226–27 (1972) (affirming admission of evidence that proved that defendant's desire to conceal prior robberies motivated his subsequently charged murder); *cf. Riddley*, 776 N.W.2d at 425–26 (construing *Martin* as an example of supreme court "affirm[ing] the admission of immediate-episode evidence"). The supreme court further developed its reasoning in *Nunn* by noting that the motive evidence arising out of the kidnapping "went to the issues of intent and premeditation, which are elements of [the charged offense]." 561 N.W.2d at 908 (citing *State v. Wofford*, 262 Minn. 112, 118, 114 N.W.2d 267, 271 (1962) ("The state may prove all relevant facts and circumstances which tend to establish any of the elements of the offense with which the accused is charged, even though such facts and circumstances may prove or tend to prove that the defendant committed other crimes."))).

As in *Nunn*, a sufficient causal connection exists between Cornell's threat and subsequent arson because the circumstances of Cornell's violent threat were related to Cornell's motive to commit arson—to retaliate against B.H. Those circumstances include the following, based on B.H.'s testimony: B.H.'s relationship with Cornell was “[u]nstable, abusive, [and] controlling”; Cornell had “anger issues”; and when Cornell became angry he was “[s]cary.” Approximately one month before the arson, Cornell threatened to burn down B.H.'s home. Approximately two hours before the arson, during a phone conversation, Cornell and B.H. got into an argument concerning whether B.H. would permit Cornell to see their son; Cornell was “the angriest [that B.H. had] ever heard [Cornell]”; and Cornell “told [B.H.] he was gonna kill [her], slit [her] throat if [she] took his son away from him.” Also during that phone conversation, Cornell told B.H. that Cornell was leaving work to come to B.H.'s home, B.H. told him not to do so, and B.H. then left her home because she “had a feeling [Cornell] was gonna come over and [she] needed to leave.” B.H. left her home between 12:00 p.m. and 12:30 p.m. and received a call from her mother at 1:21 p.m. informing B.H. that “the house was on fire.” B.H., upon hearing that news, believed “[t]hat [Cornell] burned [her] house down.”

Similar to the immediate-episode evidence in *Nunn*, evidence of Cornell's violent threat to B.H. is relevant to Cornell's motive to retaliate against B.H. and therefore relevant to the state's need to prove that Cornell had the intent to commit first-degree arson of B.H.'s home. *See* Minn. Stat. § 609.561 (listing elements of first-degree arson as including “intentional[]” destruction or damage to a dwelling); *Riddley*, 776 N.W.2d at 425 (reaffirming that “the state may prove all relevant facts and circumstances which

tend to establish any of the elements of the offense with which the accused is charged” (quotation omitted)); *see also* Minn. R. Evid. 401 (“‘Relevant evidence’ means evidence having *any tendency* to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” (emphasis added)); *Ness*, 707 N.W.2d at 687 (“Motive is not an element of most crimes, but the state is usually entitled to prove motive because motive explains the reason for an act” (quotation omitted)).

We conclude that the district court properly admitted the *Spreigl* evidence of Cornell’s violent threat toward B.H. as immediate-episode evidence.

Unfair Prejudice or Needlessly Cumulative

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403.

Cornell argues that, even if evidence of Cornell’s violent threat is otherwise admissible, the district court abused its discretion by admitting it because any probative value of the evidence is substantially outweighed by the danger of unfair prejudice. Cornell specifically argues that a “very high” potential existed that the evidence of Cornell’s violent threat would “persuade by improper means” because “there was little, if any, probative value in [Cornell’s] threats” and because “the state used the evidence . . . to suggest that [Cornell] had a history of domestic abuse.” *See Bell*, 719 N.W.2d at 641 (noting that “unfair prejudice is evidence that persuades by illegitimate

means”). We are not persuaded. The supreme court held in *Kennedy* that evidence has a “bolster[ed] . . . probative value” if the evidence helps to establish the relationship between a defendant and the victim or places events in context. 585 N.W.2d at 392. The state accomplished both goals by offering evidence that Cornell violently threatened to kill or slit B.H.’s throat approximately two hours before, as the state alleged, Cornell burned down B.H.’s home. Consequently, the state’s use of the violent-threat evidence for those purposes did not persuade by improper means.

Cornell argues that evidence of Cornell’s violent threat is needlessly cumulative, arguing that the state offered sufficient other evidence regarding Cornell’s intent to commit first-degree arson. We disagree. We are not persuaded that evidence of Cornell’s violent threat is cumulative because, although other record evidence supported the state’s argument that Cornell intentionally burned down B.H.’s home, the evidence of Cornell’s violent threat is uniquely probative of the severe degree of Cornell’s anger approximately two hours before the arson, which the state argued motivated the arson. Moreover, we are not persuaded that the state offered evidence of Cornell’s violent threat needlessly because no direct record evidence exists that Cornell committed the arson and the state consequently needed to prove its case through only circumstantial evidence. *See State v. Hurd*, 819 N.W.2d 591, 598 (Minn. 2012) (“We review convictions based on circumstantial evidence with particular scrutiny.” (quotation omitted)); *cf. State v. Tran*, 712 N.W.2d 540, 548 (Minn. 2006) (“Circumstantial evidence is defined as evidence based on inference and not on personal knowledge or observation.” (quotation omitted)).

We conclude that the district court did not abuse its discretion by admitting *Spreigl* evidence of Cornell's violent threat to B.H. as immediate-episode evidence.

Affirmed.