STATE OF MINNESOTA
IN COURT OF APPEALS
A10-15

State of Minnesota,
Respondent,

vs.

John Vincent Bradley,
Appellant.

Filed January 25, 2011
Affirmed
Minge, Judge

Ramsey County District Court
File No. 62-CR-09-5510

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

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, Andrew W. Johnson, Certified Student Attorney, St. Paul, Minnesota (for respondent)

Bradford Colbert, Legal Assistance to Minnesota Prisoners, Jacqueline Marceau, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Minge, Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

MINGE, Judge

Appellant challenges his conviction of terroristic threats, arguing that, because (1) Minnesota courts have not expressly adopted the part of Minn. Stat. § 634.20 (2008) allowing evidence of similar conduct against family members other than the victim and (2) the probative value of the evidence of similar conduct toward the victim and toward other family members is unfairly prejudicial, the district improperly admitted evidence of such similar conduct as relationship evidence. We affirm.

FACTS

From 1999 until March 2009, appellant John Vincent Bradley and C.W. lived together with their twin daughters and with T.W. and A.P., C.W.'s two children from a previous relationship. On March 23, 2009, as C.W. was preparing to have company at the house, appellant became angry and threatened, more than once, to kill her. C.W. left the house, called the police, and walked to a nearby library, where she met a St. Paul police officer.

The state charged appellant with one count of terroristic threats in violation of Minn. Stat. § 609.713 (2008). Prior to trial, the state filed its notice of intent to introduce evidence of appellant's similar conduct against C.W. and against the children in the household pursuant to Minn. Stat. § 634.20 and *State v. McCoy*, 682 N.W.2d 153 (Minn. 2004). Prior to trial, the district court ruled that this was admissible relationship evidence and that the probative value of such evidence outweighed the potential for unfair prejudice.

The district court held a bench trial. The police officer, C.W., 16-year-old T.W., and 12-year-old A.P. testified for the state. Appellant testified in his own defense. The district court found appellant guilty, stayed imposition of sentence, and placed appellant on probation for a period of up to five years, subject to conditions. This appeal followed.

D E C I S I O N

I.

The first issue raised by appellant is whether Minnesota courts accept the non-judicially formulated rule in Minn. Stat. § 634.20 on the admissibility of relationship evidence.[1] Appellant argues that the district court erred in relying on Minn. Stat. § 634.20 to admit evidence of appellant's alleged abuse of T.W. and A.P. because rules of evidence are constitutionally matters for the judicial branch of government and Minnesota courts have not expressly adopted the part of the statute allowing evidence of abuse against family members other than the victim. Appellant points to the following language of our supreme court: "It is well settled that what judges should and should not consider as evidence in a controversial matter are rules of evidence, the decision of which the constitution, by the departmentalization of the powers of government, has delegated exclusively to the courts." *McCoy*, 682 N.W.2d at 160 (quotation omitted). Although this argument presents an important constitutional, separation-of-powers question, we

[1] Citing *State v. Copeland*, 656 N.W.2d 599 (Minn. App. 2003), *review denied* (Minn. Apr. 29, 2003), appellant argued in his brief that this court has determined that Minn. Stat. § 634.20 only applies to actions of the accused against the victim. However, this court has recognized the clear reach of the statute to actions against other family members, *see State v. Valentine*, 787 N.W.2d 630, 633 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010), and appellant did not maintain this reading of the statute at oral argument.

need not reach that topic because courts may apply and enforce statutory rules of evidence as a matter of comity. *Id.* Clearly, courts may so enforce a statutory rule of evidence when it does not conflict with the Minnesota Rules of Evidence. *Id.*

In *McCoy*, the appellant argued that section 634.20 directly conflicts with Minn. R. Evid. 404(b**)**. *Id.* The *McCoy* court "expressly adopt[ed] 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." *Id.* at 161. The *McCoy* court reasoned that Minnesota courts have traditionally treated relationship evidence differently than other *Spreigl* evidence and that domestic-abuse cases are difficult to prosecute due, in part, to the victim's refusal to report or testify to the abuse. *Id.*

Citing the language quoted above, appellant argues that the *McCoy* court only adopted section 634.20 to the extent that it allows evidence of similar conduct against the victim, and that Minnesota courts have yet to adopt the part of the statute allowing evidence of similar conduct against household and family members. We recognize that *McCoy* may be reasonably read as limited to the facts of that case. But *McCoy* does not limit our acceptance of the statute to victims. The reasons for recognizing the victim portion of the statute apply to evidence of similar conduct against family members. Such conduct involves family dynamics otherwise masked by the privacy of a home, addresses the difficulties in prosecuting domestic-abuse offenses, and provides a more complete context to aid the finder of fact in determining the credibility of witnesses. *See id.* (discussing policy underlying section 634.20); *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010) ("Obviously, evidence showing how a defendant treats his family or

household members . . . sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim."), *review denied* (Minn. Nov. 16, 2010).

Although the constitutional/comity issue was not presented in *Valentine*, this court applied and discussed the statute's inclusion of evidence of similar conduct against family and household members in that case. *See* 787 N.W.2d at 638 (affirming the district court's decision to admit evidence of the accused's similar conduct toward another girlfriend); *see also State v. Gutierrez*, 667 N.W.2d 426, 435 (Minn. 2003) (providing that although the accused did not challenge the admissibility of evidence of similar conduct against a family or household member under section 634.20, a "review of the record satisfies us that the evidence was properly admitted under that section").

We conclude, as a matter of comity, to accept the evidentiary determination by the legislature in Minn. Stat. § 634.20 to allow relationship evidence by the accused toward members of the household and family of the accused, as well as toward the victim of the charged offense. Accordingly, the statute does not unconstitutionally infringe on the powers of the judicial branch of government.

II.

The second issue is whether, because of the prejudicial nature of the relationship evidence, the district court abused its discretion by admitting it.

Appellant has the burden of establishing that the district court abused its discretion in determining that admission of similar-domestic-abuse evidence will not be unfairly prejudicial. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *review denied*

(Minn. Oct. 29, 2008). The statute provides, "Evidence of similar conduct . . . is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice . . . ." Minn. Stat. § 634.20.

Appellant argues that the district court abused its discretion in admitting the section 634.20 evidence because of the highly and unfairly prejudicial nature of the evidence. At trial, C.W. described numerous incidents of threats, physical violence, and verbal abuse by appellant. For example, C.W. testified that early in their relationship, appellant had given her a black eye after she said something he did not like, that on another occasion, he grabbed her and his sister by the neck, choking them, and on a third time, he came after her with a butcher knife and they wrestled over the knife, bending the blade.

Sixteen-year-old T.W. testified that he did not feel safe living with appellant when appellant was angry, and that he had witnessed several of the incidents described by C.W. T.W. recounted that on one occasion he heard C.W. begging appellant not to stab her with a knife and that later he "saw the knife and paint on the knife and a hole in the wall from the knife." In addition, T.W. testified that appellant had choked him and smashed his computer.

Twelve-year-old A.P. testified that it was "scary" living with appellant and that she saw appellant hitting and choking C.W. A.P. also testified that appellant had choked her, lifting her up so that her feet were not touching the ground, after she accidentally threw soap on the ceiling.

Here, the section 634.20 evidence had significant probative value. It served the intended function of providing a context within which the district court in this bench trial could evaluate the credibility of appellant and C.W. Because C.W. had not reported earlier incidents to law enforcement and the offenses occurred within the privacy of the home, "[n]o one else was able to provide eyewitness testimony regarding the events that transpired." *See McCoy*, 862 N.W.2d at 161. C.W. testified that on March 23, 2009, appellant threatened to kill her; appellant testified that he did not threaten to kill her, but said that "he wasn't going to kill himself by working hard." Given this clash in accounts of what happened, the district court's credibility determinations were critical to the outcome of the case.

In addition, section 634.20 evidence may be particularly probative when the charged offense is terroristic threats. Minn. Stat. § 609.713, subd. 1 provides, "Whoever threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in reckless disregard of the risk of causing such terror," may be convicted of terroristic threats. Courts determine whether words are threatening or harmless by examining the context in which they are used. *State v. Schweppe*, 306 Minn. 395, 399, 237 N.W.2d 609, 613 (1975). Specifically, whether a statement is a threat turns on "whether the communication *in its context* would have a reasonable tendency to create apprehension that its originator will act according to its tenor." *Id.* (emphasis added) (quotation omitted). Here, the evidence was probative to show whether appellant's statements qualified as "threat[s]" under section 609.713, subdivision 1.

Appellant argues that the section 634.20 evidence was unfairly prejudicial because it showed him to be an angry, violent person. But the unfair prejudice requires more than simply "damaging evidence, [or] 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). For example, in *State v. O'Meara*, we concluded that evidence of similar conduct was "so unfairly prejudicial that it inherently violates the probative/prejudicial balancing test" when the accused had been acquitted of the charges resulting from the similar conduct. 755 N.W.2d 29, 34 (Minn. App. 2008). Here, unlike in *O'Meara*, the district court found the testimony of C.W., T.W., and A.P. to be credible, persuasive, and consistent. For example, the district court found that T.W. and A.P. "provided details that go beyond what they might have talked about with a lawyer," such as the details about the discovered butcher knife.

Lastly, we note the importance of the fact-finder's awareness of the limited role of the evidence. *See Lindsey*, 755 N.W.2d at 757 (reasoning that the district court minimized any potential prejudice by cautioning the jury on the limited purpose of the relationship evidence). Here, the district court judge was the trier of fact. He noted that he was "very aware what the [jury] instruction is" with regard to relationship evidence, and stated to appellant's attorney,

> Your client understands that he is being tried for the offense[] charged, and that he is not being tried and can't be convicted for any offense except that being charged? So even if this other information were to come in, it's still going to be

> similar[:] whether or not the factors for terroristic threats have been proven.

In sum, we conclude that the district court did not abuse its discretion in determining that the probative value of the proffered section 634.20 evidence was not outweighed by the danger of unfair prejudice and by admitting that evidence.

Affirmed.

Dated: