STATE OF MINNESOTA
IN COURT OF APPEALS
A10-141

State of Minnesota,
Respondent,

vs.

Charles David Sackett,
Appellant.

Filed December 28, 2010
Affirmed
Wright, Judge

Winona County District Court
File No. 85-CR-09-52

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

Charles E. MacLean, Winona County Attorney, Stephanie E. Nuttall, Assistant County Attorney, Winona, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Stauber, Judge.

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

WRIGHT, Judge

Following a jury trial, appellant was convicted of second-degree burglary, false imprisonment, domestic assault, violation of a domestic abuse no-contact order, driving while impaired, misdemeanor theft, and fourth-degree damage to property. He now seeks reversal of his convictions, a new trial, or vacation of the sentence imposed for false imprisonment, arguing that the district court erred by admitting unfairly prejudicial relationship evidence and by imposing separate sentences for the second-degree-burglary and false-imprisonment convictions. We affirm.

FACTS

On January 2, 2009, appellant Charles David Sackett knocked on the door of an apartment in Winona, where his wife, J.S., was staying with her former sister-in-law. J.S. was alone in the apartment at the time. A domestic abuse no-contact order prohibited Sackett from contacting J.S.

When J.S. opened the door, she observed that Sackett was inebriated. J.S. told Sackett that he could not be there and attempted to close the door, which Sackett resisted. Sackett eventually entered the apartment. As J.S. attempted to flee, Sackett followed her, grabbed her by the hair, and pushed her back inside the apartment. J.S. again ordered Sackett to leave. Instead, Sackett grabbed a knife from a table and pressed J.S. against the door. As J.S. tried to flee again, Sackett stabbed the door multiple times with the knife and verbally threatened her. J.S. freed herself and, because there was no telephone in the apartment, she attempted to reach a computer to send a message seeking help.

Sackett smashed a chair against the floor and pulled the wires from the computer. J.S. finally fled the apartment and hid nearby. Sackett left the apartment and used a key to lock the apartment door. J.S. ran after Sackett to retrieve the key, but Sackett left the premises.

A neighbor who heard J.S. and Sackett arguing called the Winona Police Department. Officer Michael Papke arrived shortly thereafter. After speaking with J.S., Officer Papke sought assistance from other police units to find Sackett. When J.S.'s former sister-in-law returned to the apartment a short time later, she and Officer Papke observed fresh scratches and gouges on the inside of the apartment door, a broken chair, and a knife. She also determined that $15 and a spare key were missing from the kitchen.

Sackett was arrested a short time later. During a search incident to the arrest, police found the missing apartment key in Sackett's pocket. Sackett admitted drinking earlier that morning and driving to the residence where he was found. After failing field sobriety tests, he was taken to the law enforcement center where he submitted to an intoxilyzer test.

Sackett was charged with five felony offenses: first-degree burglary while a non-accomplice was present, first-degree burglary while possessing a dangerous weapon, first-degree burglary with an assault, second-degree burglary of a dwelling, and false imprisonment. He also was charged with six misdemeanor offenses: domestic assault,

violation of a domestic abuse no-contact order, two counts of driving while impaired,[1] misdemeanor theft, and fourth-degree damage to property.

At the jury trial that followed, the district court overruled Sackett's objection and permitted J.S. to testify regarding five prior occasions when Sackett assaulted or threatened her. The district court ruled that this testimony was admissible under Minn. Stat. § 634.20 (2008), which authorizes the admission of evidence of similar domestic abuse by the accused against a victim unless the probative value of the evidence is substantially outweighed by danger of unfair prejudice. Before J.S. testified about the prior abuse, the district court instructed the jury as follows:

> [T]he State is about to introduce evidence of occurrences over the past couple of years involving [J.S.] and Charles Sackett. This evidence is being offered for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the complaint. The defendant is not being . . . tried for and may not be convicted of any offense other than the charged offenses from January 2, 2009. You are not to convict the defendant on the basis of this other occurrence evidence. To do so might result in unjust double punishment.

Sackett waived his right to testify and rested without calling any witnesses. During the final jury charge, the district court again instructed the jury as to the limited purpose for which J.S.'s testimony about the prior incidents of domestic abuse could be considered. During its deliberations, the jury asked the district court whether Sackett's

[1] Sackett later stipulated to having an alcohol concentration of .13 within two hours of driving a motor vehicle and that the testing method for measuring the alcohol concentration is reliable.

"second entry into the apartment constitute[s] an element of burglary." The district court responded by re-reading relevant portions of the final jury instructions.

The jury acquitted Sackett of the three first-degree-burglary charges and found him guilty of second-degree burglary, a violation of Minn. Stat. § 609.582, subd. 2(a)(1) (2008); false imprisonment, a violation of Minn. Stat. § 609.255, subd. 2 (2008); domestic assault, a violation of Minn. Stat. § 609.2242, subd. 1(1) (2008); violating a domestic abuse no-contact order, a violation of Minn. Stat. § 518B.01, subd. 22(b) (2008); two counts of fourth-degree driving while impaired, violations of Minn. Stat. §§ 169A.20, subd. 1(1), (5), 169A.27, subd. 1 (2008); theft, a violation of Minn. Stat. § 609.52, subd. 2(1) (2008); and fourth-degree damage to property, a violation of Minn. Stat. § 609.595, subd. 3 (2008). The district court adjudicated Sackett guilty of second-degree burglary and continued any other adjudication to the sentencing hearing.

At the sentencing hearing, the district court entered judgments of conviction for two additional crimes: false imprisonment and fourth-degree driving while impaired. The district court explained that, of the offenses underlying the second-degree-burglary conviction, false imprisonment was the most serious offense for which Sackett was found guilty. The district court dismissed the remaining offenses of conviction because they were part of the same behavioral incident. The district court then imposed a sentence of 51 months' imprisonment for second-degree burglary, a consecutive sentence of one year and one day for false imprisonment, and a concurrent sentence of 30 days' imprisonment for driving while impaired. This appeal followed.

D E C I S I O N

I.

Sackett argues that the district court erred by admitting evidence of past incidents of domestic abuse and threats against J.S. pursuant to Minn. Stat. § 634.20 because the danger of unfair prejudice substantially outweighed the probative value of that evidence. Evidentiary rulings rest within the district court's sound discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Thus, we will not disturb the challenged evidentiary ruling unless the district court abused its discretion and prejudice resulted. *Id.* To establish prejudice, Sackett must demonstrate a reasonable probability that, without the evidence, the jury would have returned a more favorable verdict. *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994).

Minnesota law provides that

> [e]vidence 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. 'Similar conduct' includes . . . evidence of domestic abuse . . . .

Minn. Stat. § 634.20. Section 634.20 evidence is offered to "illuminate the history of the relationship" by putting the charged offense in the context of the relationship between the accused and the alleged victim. *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). The purpose of this type of evidence is to address the victim's credibility when describing domestic abuse, an offense that often occurs privately; the purpose is not to establish that

a defendant acted in conformity with his prior conduct. *Id.* at 161. Relationship evidence is admissible under section 634.20 if (1) it demonstrates similar prior conduct by the accused, (2) the conduct is perpetrated 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. Minn. Stat. § 634.20; *McCoy*, 682 N.W.2d at 159.

"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. Lindsey*, 755 N.W.2d 752, 756 (Minn. App. 2008) (quotation omitted), *review denied* (Minn. Oct. 29, 2008). Such evidence is not unfairly prejudicial merely because it is damaging evidence or even severely damaging evidence. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). Rather, this type of evidence is unfairly prejudicial when it persuades by illegitimate means and gives a party an unfair advantage. *Id.*

Sackett does not dispute that the past incidents that J.S. described are "similar prior conduct" within the meaning of section 634.20. Nor does he deny that he committed the "similar prior conduct." Rather, he asserts that J.S.'s description of five prior incidents was excessive, inflammatory, and portrayed him as a habitual abuser who deserved punishment regardless of whether he committed the charged offenses. We disagree. J.S.'s testimony regarding the section 634.20 evidence was a concise recitation of the five incidents during her lengthy and detailed account of the January 2 incident. She testified that Sackett once wielded a knife and threatened her and several other people gathered in the basement of their residence. She testified that, during an

argument, Sackett physically assaulted her, knocked her head into a wall and, in front of their children, held a knife to her throat and threatened her. J.S. described another occasion when Sackett became angry with her while they were in their car, prevented her from leaving the car by pulling her hair, and pinned her against the side of an overpass after she fled the car. The next day, when J.S. was driving with Sackett and their children, Sackett again became angry with J.S., caused the car to swerve by grabbing the steering wheel, insulted her, tightly gripped her leg, and jabbed her with a screwdriver with which he had earlier threatened to kill her. J.S. also testified that, on the evening before he committed the offenses for which he was on trial, Sackett approached her at a bar despite the domestic abuse no-contact order and argued with her.

This relationship evidence was probative because it explained why J.S. feared Sackett when he appeared at the apartment on January 2, and it explained her behavior during the violent encounter. In doing so, it bolstered the victim's credibility as a witness. After carefully reviewing the record, we reject Sackett's contention that the probative value of this evidence was substantially outweighed by the risks that the jury punished him for his past abusive actions or convicted him in order to protect J.S. Although the evidence of Sackett's past abuse was powerful, it was not unfairly prejudicial.

Indeed, the manner in which the evidence was presented abrogated the potential for an unfairly prejudicial effect. J.S.'s account of these incidents was concise and only a small part of her testimony. The state did not corroborate J.S.'s accounts with testimony from other witnesses or refer to the section 634.20 evidence in its summation.

Additionally, the potential for unfair prejudice was mitigated by the cautionary instructions that the district court gave to the jury both before J.S. testified and in its final instructions.[2] *See Lindsey*, 755 N.W.2d at 757 (holding that cautionary instructions limited potential for unfair prejudice of prior similar conduct and lessened the probability that the jury would give undue weight to the evidence); *Waino*, 611 N.W.2d at 579 (upholding admission of several prior incidents of domestic abuse when that evidence explained context of charged assault and potentially unfair prejudicial effect was mitigated by cautionary jury instruction).

Sackett also argues that J.S.'s testimony about his threats to others and his abusive acts committed in the presence of their children exceeded the limited purpose of describing the nature of the relationship between J.S. and Sackett. But section 634.20 expressly permits evidence of similar conduct by the accused "against other family or household members." *See* Minn. Stat. § 634.20. Thus, the evidence of prior domestic abuse during which the children were present falls within the scope of section 634.20.

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[2] Sackett argues that the district court's cautionary instruction improperly drew the jury's attention to the testimony. *See State v. Strommen*, 648 N.W.2d 681, 687 (Minn. 2002) (holding that a cautionary instruction can exacerbate prejudice of other-crimes evidence wrongly admitted at trial). But contrary to the facts in *Strommen*, the evidence here was properly admitted and the cautionary instruction to direct the proper use of this evidence limited any potential for unfair prejudice. *State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006) ("A cautionary instruction is strongly preferred."), *review denied* (Minn. Jan. 24, 2007); *see Lindsey*, 755 N.W.2d at 757; *State v. Waino*, 611 N.W.2d 575, 579 (Minn. App. 2000).

Sackett also contends that the instruction was unfairly prejudicial because the district court failed to caution the jury against misusing the relationship evidence as character or propensity evidence. But this argument is contrary to the record. The district court twice cautioned the jury that it should not convict Sackett based on the evidence of prior conduct. The district court's instructions gave the jury proper guidance on the limited use for this relationship evidence.

Likewise, the episode of abusive conduct that Sackett committed in the basement is admissible relationship evidence because J.S., who was present at the gathering, was one of the individuals threatened. Both incidents are relevant and probative evidence because they explain the basis for J.S.'s fear of Sackett.

In sum, the evidence admitted under section 634.20 properly illuminated J.S.'s relationship with Sackett and complemented the other substantial evidence, including J.S.'s testimony, linking Sackett to the offenses. When the record is viewed in its entirety, the probative value of the section 634.20 evidence substantially outweighed the danger of any unfair prejudice. Thus, the district court exercised sound discretion when it admitted evidence of Sackett's prior domestic abuse of J.S. under Minn. Stat. § 634.20 and properly instructed the jury as to the limited purposes for which the evidence could be used.

II.

Sackett next challenges the district court's imposition of separate sentences for second-degree burglary and false imprisonment. Ordinarily, when a person's conduct constitutes more than one offense, punishment may be imposed on only one of the offenses. Minn. Stat. § 609.035, subd. 1 (2008). An exception to this general rule exists for burglary. A conviction of the offense of burglary does not bar conviction of and punishment for any other offense committed when entering the building or while therein. Minn. Stat. § 609.585 (2008). Section 609.585 permits the district court to impose sentences for both a burglary and one of the offenses committed during the burglary, even when they were committed as part of a single behavioral event. *State v. Hartfield*,

459 N.W.2d 668, 670 (Minn. 1990). Whether multiple offenses arose from a single behavioral incident depends on the facts and circumstances of the particular case. *State v. Hawkins*, 511 N.W.2d 9, 13 (Minn. 1994).

Sackett asserts that, because the jury's verdict is ambiguous as to whether he committed the false-imprisonment offense during the burglary, the district court was required to resolve any doubt about the jury's verdict in his favor. *See State v. Cromey*, 348 N.W.2d 759, 760-61 (Minn. 1984) (holding that because it was impossible to discern from jury-verdict form whether defendant was convicted of felony murder or intentional murder, which have different sentencing levels, fairness dictated sentencing defendant for lesser offense). The jury convicted Sackett of second-degree burglary, which required a finding that he committed or intended to commit an offense after entering a building without consent. Minn. Stat. § 609.582, subd. 2 (2008). Sackett argues that, because the jury did not identify which offense or offenses occurred during the burglary, the jury may have determined that the false imprisonment occurred when Sackett was in the apartment with consent. This possibility, he maintains, precludes a separate sentence for false imprisonment.

Sackett's argument is contrary to the uncontroverted evidence on which the convictions are founded. Simply put, there is no evidence that Sackett ever was in the apartment with consent. J.S. testified that she did not permit Sackett to enter the apartment. When Sackett appeared, she attempted to close the door and repeatedly told him to leave. The apartment's owner also testified that she did not consent to Sackett's entry, and she had instructed J.S. not to permit Sackett to enter. Because there is no

evidence on which the jury could have relied to determine that any of the offenses occurred while Sackett was in the apartment *with consent*, Sackett's argument fails.

The district court's imposition of a sentence for each offense was proper under Minn. Stat. § 609.585 because the district court correctly determined that Sackett committed the false-imprisonment offense during the burglary.

Affirmed.