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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-616**

State of Minnesota,  
Respondent,

vs.

Walter Jamille Randolph,  
Appellant.

**Filed May 7, 2012  
Affirmed  
Harten, Judge\***

Rice County District Court  
File No. 66-CR-09-1572

Lori Swanson, Attorney General, David Strommen Voigt, Deputy Attorney General, St. Paul, Minnesota; and

Kurt S. Fischer, Faribault, Minnesota (for respondent)

Jorma Cavaleri, Faribault, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Harten,  
Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**HARTEN**, Judge

Appellant challenges his conviction for misdemeanor domestic assault, arguing that the district court abused its discretion in denying his motion to exclude evidence of his relationship with the victim. Because the evidence was admissible under Minn. Stat. § 634.20 (2008), we affirm.

### FACTS

Appellant Walter Randolph assaulted his girlfriend, J.B., in November 2008. On 30 March 2009, he discussed this event with members of her family. That evening, while appellant and J.B. were watching television in her apartment, appellant started an argument with J.B. As the argument escalated, appellant pushed J.B., causing her to fall because she was on crutches. Appellant stood over her, yelling; J.B. thought he was going to hurt her. Appellant left the room, returned and knocked the television down, then left the apartment. J.B. went to a neighbor's to call the police.

When the police came, an officer took a statement from J.B. Their conversation was recorded.

[Officer]: [W]hat happened?

[J.B.]: . . . [Appellant] was just angry. When I got up and tried to leave the situation he pushed me, and I . . .

[Officer]: How did he push you? With one hand, two hands?

[J.B.]: He pushed me with one arm, with his elbow. His elbow hit me in the chest. When his elbow hit me in the chest I flew backwards across the room probably, approximately half way across the living room.

[Officer]: OK, so a few feet?

[J.B.]: And then he, when I fell down on the ground he proceeded to stand over me and was yelling at me.

[Officer]: OK, were you afraid he was going to hurt you or hit you?

[J.B.]: Yes.

[Officer]: Has he hit you in the past?

[J.B.]: Yes.

....

[Officer]: What was that fight [on 30 March] about?

[J.B.]: . . . He was mad saying things about what my family had said, but it was about the first time when he had hit me, and I thought they had taken care of that already.

[Officer]: Your family had taken care of that?

[J.B.]: No, they, they had a confrontation, him and my family.

[Officer]: What do you mean by, like a fight?

[J.B.]: No, they had confronted and talked through it, and said this is what we see, and this is what we feel, this is, this is how we feel about what you did, and it[']s not ok, and it better not happen again. And basic like, just basic protection like, we don't want you to hurt her, if there is something we can do to help, let us know. Like a basic thing . . . that was around Thanksgiving time and all of [a] sudden he brought it up again, and I don't know why. Because I thought that had been already taken care of between them, of stuff that they felt between each other, my uncles, and my cousins and my family was very upset about last time that he

....

[Officer]: How long ago did he hit you?

[J.B.]: It was a couple of months ago.

[Officer]: And you filed a police report at that time?

[J.B.]: Umm, I didn't press charges, but I did have to go to the hospital and they're mandate[d] reporters and they automatically sent the charges over, and he was quite upset, and he got the charges from them even though it said I didn't press the charges, he was very upset with me, um about it.

Appellant was charged with misdemeanor domestic assault, misdemeanor criminal damage to property, and disorderly conduct.<sup>1</sup> He moved to exclude evidence of his prior assault of J.B.; the motion was denied. Before the jurors heard the recording of J.B.'s statement to the police officer, the district court instructed them.

[T]here is one other thing I want to caution you about. On this statement the State is about to introduce evidence of conduct by [appellant] that occurred on November 5, 2008. In other words, before the incident that is charged here.

This evidence is being offered for the limited purpose of showing the nature and extent of the relationship between [J.B.] and [appellant] in order to assist you in determining whether [he] committed the acts that he is charged with in this case.

But [he] is not being tried for and may not be convicted of any behavior other than the charged offenses, and you may not convict [him] on the basis of any other conduct that occurred on November 5, 2008, even though you'll be hearing some reference to that in the statement. To do so could result in double punishment.

So I wanted to give you that cautionary instruction that you are going to receive that evidence of the November 5 incident solely for a limited purpose.

The jury found appellant guilty of misdemeanor domestic assault and not guilty of misdemeanor damage to property and disorderly conduct.

Appellant challenges his conviction, arguing that the district court abused its discretion in denying his motion to exclude evidence of his prior assault.

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<sup>1</sup> He was also charged with driving after suspension of his license, to which he pleaded guilty.

## DECISION

Minn. Stat. § 634.20 (2008) 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.

This evidence is referred to as “relationship evidence.” *See, e.g., State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004) (discussing “evidence that illuminates the history of the relationship between an accused and a victim”). This court reviews a district court’s admission of relationship evidence for an abuse of discretion. *Id.*; *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) Appellant has the burden of establishing that the district court abused its discretion and that appellant was thereby prejudiced. *See id.*

Appellant argues that the district court abused its discretion because the evidence of his November 2008 assault of J.B. was “highly prejudicial under these circumstances.” For this argument, he relies on *State v. O’Meara*, 755 N.W.2d 29, 35 (Minn. App. 2008) (concluding that, although the district court erred in admitting relationship-evidence conduct when the defendant had been acquitted of charges arising out of that conduct, there was no prejudice because “there was ample record evidence to support [the defendant’s] convictions” and the testimony regarding the relationship-evidence conduct “was only a small portion of the evidence presented to the jury”). Appellant’s reliance is misplaced because, unlike the accused in *O’Meara*, appellant was not acquitted of the charges resulting from prior assault of the victim. He asserts that, because the charges

were dismissed, “it was entirely probable that [he] could have subsequently been acquitted of those charges,” but he gives no support for this assertion nor any explanation of why the charges were dismissed.<sup>2</sup>

Moreover, there is ample evidence to support appellant’s conviction: J.B.’s testimony indicated that he committed an act against her with intent to cause her fear of immediate bodily harm. *See* Minn. Stat. § 609.2242, subd. 1 (2008) (defining misdemeanor domestic assault). In addition, the relationship evidence was a very small percentage of the evidence the jury heard. Both these circumstances indicate that the prejudicial effect of the relationship evidence did not outweigh its probative value.

Finally, appellant argues that, because the jury acquitted him of disorderly conduct, its finding that he was guilty of misdemeanor domestic assault was “based on the unproved accusations of prior conduct.” But appellant testified that J.B. was the only victim and that the offense took place in her apartment. She answered the question, “What were you scared of?” with “[That appellant] was going to take the argument to a physical level,” and she answered “Yes” when asked if she thought he was going to hit her and hurt her. A jury could have found both that appellant was guilty of committing an act with intent to cause J.B. fear of immediate bodily harm within the meaning of Minn. Stat. § 609.2242, subd. 1, and that he was not guilty beyond a reasonable doubt of engaging in brawling or fighting, disturbing an assembly or meeting, or engaging in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or

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<sup>2</sup> In her statement, J.B. told the officer that she did not press charges from that incident: the charges arose from the hospital report of her injuries.

abusive language tending reasonably to arouse alarm, anger or resentment in others within the meaning of Minn. Stat. § 609.72, subd. 1 (2008) (defining disorderly conduct).

The district court did not abuse its discretion in denying appellant's motion to exclude evidence of his prior assault of J.B.

**Affirmed.**