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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-1809**

State of Minnesota,
Respondent,

vs.

Jeffrey Allen Hanson,
Appellant.

**Filed January 15, 2008
Affirmed
Minge, Judge**

St. Louis County District Court
File No. 69DU-CR-06-2049

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Melanie S. Ford, St. Louis County Attorney, James T. Nephew, Assistant County Attorney, 100 North Fifth Avenue West, Suite 501, Duluth, MN 55802 (for respondent)

John M. Stuart, State Public Defender, Susan Andrews, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Minge, Judge.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges his conviction of domestic assault in violation of Minn. Stat. 609.2242, subd. 2 (2006). Appellant argues that the district court committed prejudicial error when it allowed testimony regarding two prior acts of domestic abuse. Because the probative value of the testimonial evidence outweighs its potential for unfair prejudice, we affirm.

DECISION

Appellant Jeffrey Hanson was charged with one count of domestic assault for assaulting his girlfriend. The jury returned a verdict of guilty. This appeal follows.

The only issue on appeal is whether the district court erred in permitting the victim to testify about two prior assaults. Evidentiary rulings are within the sound discretion of the district court and will only be reversed for a clear abuse of that discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

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 “domestic abuse” and “family or household members” have the meanings given under section 518B.01, subdivision 2.

Minn. Stat. § 634.20 (2006). A family or household member includes “persons who have a child in common regardless of whether they have been married or have lived together at

any time.” Minn. Stat. § 518B.01, subd. 2(b)(5) (2006). It is undisputed that the girlfriend and Hanson have two children together.

Hanson alleges that the admission of prior instances of abuse against his girlfriend was unfairly prejudicial. Admissibility of evidence of similar prior conduct under the domestic-abuse statute depends only on (1) whether the prior conduct is similar; and (2) whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *State v. McCoy*, 682 N.W.2d 153, 158-59 (Minn. 2004). Similar-conduct evidence admitted under section 634.20 does not have to meet the clear-and-convincing standard of Minn. R. Evid. 404(b). *Id.* at 159-61.

At trial, the girlfriend testified that her relationship with Hanson was “rugged” and “terrible,” that she had gone to visit him at his apartment, that Hanson became loud and swore at her, and that she decided to leave and began to put on her shoes. She continued to recount that after she had put on her first shoe, Hanson attacked her, that he punched her in the arm with “[a] good right,” causing an injury that still hurt her at the time of trial (approximately four and one-half months later), and that Hanson grabbed her by the arms and threw her onto the floor, causing a scrape on her leg, and an injury to her hip. She testified that she was scared that Hanson would kick her while she was down.

Over the objection of Hanson’s counsel, the girlfriend was also allowed to testify about past assaults she suffered at Hanson’s hands. She stated that in 1997, while struggling with Hanson, she fell to the ground and cut her head. She recalled that during this incident she was punched multiple times, and that a passing citizen stopped Hanson from beating her further as she lay on the ground. During another incident, Hanson

followed her from a bar, fought with her, and as she lay on the ground he broke her nose by stomping on her head. In his brief, Hanson essentially admits to these assaults. This appeal turns on the question of whether the evidence of prior similar acts was substantially outweighed by the danger of unfair prejudice.

Domestic abuse is of a private nature, often underreported, and “frequently involves a pattern of activity that may escalate over time” *McCoy*, 682 N.W.2d at 161. Evidence of prior incidents “may be offered to illuminate the history of the relationship, that is, to put the crime charged in the context of the relationship between the two.” *Id.* at 159. The supreme court has ““on numerous occasions recognized the inherent value of evidence of past acts of violence committed by the same defendant against the same victim.”” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quoting *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999)).

This case illustrates how evidence of prior abuse gives context to the current conduct. Hanson was convicted of domestic assault by intentionally causing fear, in violation of Minn. Stat. § 609.2242, subd. 2.¹ The girlfriend testified that in the previous incidents after Hanson had gotten her on the ground, he continued to assault her. She testified that during the current incident she was scared Hanson would kick her after he had knocked her to the ground. The evidence of prior assaults when she was on the

¹ Although charged and convicted on only one count of domestic assault, the jury considered two alternative counts: domestic assault with intent to cause fear, and domestic assault with intent to cause bodily harm. Both are crimes listed under Minn. Stat. § 609.2242, subd. 2 (2006). The jury found Hanson guilty on each count, but the district court only entered judgment of conviction on one count. On appeal, neither party mentions that this creates ambiguity regarding which type of assault the district court entered judgment upon. It does not appear that Hanson is prejudiced by this ambiguity.

ground, in particular the stomping incident, are highly probative to show that this fear was intentionally caused. The prior assaults bear directly on proving an element of the charged offense.

Hanson argues that the probative value of the evidence of his prior conduct diminished with the passage of time. The passage of time is relevant in determining probative value. *State v. Washington*, 693 N.W.2d 195, 201 (Minn. 2005). The more remote in time a prior act, the more similar it must be to the current case to be relevant. *Id.* at 202. But where the prior similar acts result in a conviction, or a defendant has been incarcerated for a significant portion of the intervening period, concerns over relevance are lessened. *Id.* at 202-03 (accused had been incarcerated for over eight of the 16 years since the prior act in question).

Three other supreme court cases have upheld the admission of prior similar acts that were significantly older than presented in this case. *See State v. Blom*, 682 N.W.2d 578, 611-13 (Minn. 2004) (holding that where defendant accused of kidnapping and murdering young woman, evidence of kidnapping two young women 16 years prior was admissible); *State v. Wermerskirchen*, 497 N.W.2d 235, 242 n.3 (Minn. 1993) (holding that where defendant accused of fondling minor daughter, evidence of fondling three other minors seven to 19 years before trial was admissible); *State v. Rainer*, 411 N.W.2d 490, 497-98 (Minn. 1987) (finding that where defendant accused of killing fiancé, prior violent acts towards first wife admissible even though they were 16 to 19 years old, because similar intervening violence committed upon second and third wives until two years prior to the current offense).

Here, there were nine and ten-year periods between the current offense and the prior domestic abuse. The charged assaults were similar to the prior assaults, which resulted in two separate convictions. Furthermore, Hanson was apparently imprisoned for over two of the years between the prior assaults and this incident.

“[U]nfair 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.” *Bell*, 719 N.W.2d at 641 (quotation omitted). Here, although the objected-to testimony was prejudicial, it was probative. The evidence was submitted to help prove an element of one of the charges in the case; it was not being used for illegitimate means. Despite the passage of time the past incidents were relevant to establishing Hanson’s intent.

We conclude the district court did not abuse its discretion in determining that the girlfriend’s testimony of the prior offenses was not unfairly prejudicial and admitting it into evidence.

Affirmed.

Dated: