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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1810**

State of Minnesota,
Respondent,

vs.

Teng Houa Vang,
Appellant.

**Filed November 30, 2010
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CR-09-1110

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

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, MN 55102 (for respondent)

David W. Merchant, Chief Appellate Public Defender, David E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Halbrooks, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his convictions of violation of a domestic-abuse no-contact order and violation of a harassment restraining order, arguing that the district court

abused its discretion by holding that prior relationship evidence was admissible during trial. Because we conclude that the district court did not abuse its discretion, we affirm.

FACTS

In mid 2008, appellant Teng Houa Vang became the subject of a domestic-abuse no-contact order and a harassment restraining order, both of which prohibited him from having contact with his father, Y.V., or Y.V.'s residence. On October 3, 2008, appellant went to Y.V.'s residence and attempted to enter. The two began to argue outside of the home, and appellant eventually threw a rock at his father's head. A neighbor called the police, and appellant was arrested and charged with violating the domestic-abuse no-contact order and the harassment restraining order.

Before trial, the state notified appellant of its intent to introduce evidence of the history of the relationship between appellant and Y.V. pursuant to Minn. Stat. § 634.20 (2008). In a second notice, the state informed appellant that it intended to introduce eight prior instances of appellant's conduct, including three prior violations of an order for protection (OFP), three instances of terroristic threats, one violation of a domestic-abuse OFP, and one instance of domestic assault.

The district court considered the state's motion on the record. The arguments began with appellant's attorney discussing each of the prior incidents and arguing for exclusion. The state then presented arguments for the admissibility of the evidence. The district court ruled separately on each proffered incident, eventually holding that seven of the eight instances were admissible as prior-relationship evidence due to the similarity of the evidence to the charged offense.

At trial, the state attempted to admit this evidence through Y.V.'s testimony. Before the examination, the district court gave the jury a cautionary instruction regarding prior-relationship evidence:

[T]his evidence is being offered for the limited purpose of illuminating the history of the relationship between the defendant and [Y.V.] in order to prove up the crime charged in the context of the relationship between these two men. This evidence is not to be used to prove the character of the defendant, or that defendant acted in conformity with such character.

The defendant is not being tried for, and may not be convicted of, any of the offenses other than the charged offenses.

Due to a lack of memory, Y.V. was not able to testify about a majority of the incidents. As a result, he testified about only two of the seven instances. At the end of trial, the district court gave another cautionary instruction to the jury regarding the prior-relationship evidence discussed during Y.V.'s testimony.

The jury found appellant guilty of both charges, and this appeal follows.

DECISION

We review a district court's decision to admit similar-conduct evidence under Minn. Stat. § 634.20 for an abuse of discretion. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008). Appellant has the burden to establish that the district court abused its discretion and that admission of the similar-conduct evidence prejudiced appellant. *See id.* In general, evidence of prior crimes or bad acts, known as *Spreigl* evidence, is not admissible as character evidence to show that

the person acted in conformity with that character. Minn. R. Evid. 404(b); *see generally* *State v. Spreigl*, 272 Minn. 488, 139 N.W.2d 167 (1965). But section 634.20 provides:

Evidence of similar conduct by the accused against the victim of domestic abuse . . . 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 evidence is admissible to “demonstrate the history of the relationship between the accused and the victim of domestic abuse” and to place the offense in the appropriate context. *State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008).

Appellant first argues that the district court erred as a matter of law by failing to apply the correct standard, and as such, we should review this matter de novo. According to appellant, the district court “mistakenly assumed that [it] was required to admit relationship evidence and before analyzing the evidence under the correct standard, said it was ‘coming in’.” While the district court did state during the proceedings that the evidence was likely to be admitted and that section 634.20 is a “pro-prosecution” statute, the record reflects that the district court applied the proper standard in making its ruling. The district court made sure that the evidence was of similar conduct, and considered appellant’s arguments that the evidence was either unfairly prejudicial or cumulative. In addition, the district court limited certain evidence and excluded one prior instance due to its cumulative nature. Thus, we conclude that the district court applied the proper standard. We therefore review its decision to admit the prior-relationship evidence for an abuse of discretion.

Appellant argues that the district court abused its discretion by holding that seven of the eight instances of prior-relationship evidence were admissible because they were unduly prejudicial. We disagree. The record reflects that the district court properly weighed the probative value of the evidence in demonstrating the relationship between Y.V. and appellant and considered whether that value was substantially outweighed by the danger of unfair prejudice. Furthermore, while this type of other-acts evidence inevitably has some prejudicial effect, the district court limited any undue prejudice by warning the state not to discuss a terroristic-threats component of an uncharged violation of an outstanding OFP and by granting appellant's request to preclude the state from offering an uncharged instance of terroristic threats. The admitted prior-relationship evidence was of similar conduct and illustrative of appellant's relationship with his father, and its probative value was not substantially outweighed by the danger of unfair prejudice. We conclude that the district court acted within its discretion by ruling that this evidence was admissible.

Affirmed.