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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1814**

State of Minnesota,
Respondent,

vs.

James Thomas Richmond,
Appellant.

**Filed August 15, 2011
Affirmed
Hudson, Judge**

Ramsey County District Court
File No. 62-CR-10-431

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from his conviction of felony domestic assault, appellant argues that the evidence was insufficient to support the conviction and that the district court abused its discretion by admitting relationship evidence. We affirm.

FACTS

This case arises out of an incident on January 22, 2010, during which appellant James Richmond assaulted complainant, a woman with whom he had recently initiated a romantic and sexual relationship. Appellant was charged with felony terroristic threats in violation of Minn. Stat. § 609.713, subd. 1 (2008), and felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2008). The charges were tried to a jury.

Complainant and appellant became friends in the summer of 2009. Their friendship ended shortly after it began, however, because appellant married another woman. Complainant offered conflicting testimony about whether she had romantic feelings for appellant at the time their friendship ended.

In January 2010, appellant reconnected with complainant. He told her that he was separated from his wife, he was planning to get a divorce, and he wanted to pursue a relationship with her. He initially started coming to complainant's house twice a week, but he eventually began visiting every day.

Complainant provided somewhat conflicting testimony about her feelings for appellant. At first, she testified that she had developed feelings—but not strong feelings—for appellant. Upon further questioning, however, she testified that she had

developed feelings for appellant, she believed that appellant reciprocated those feelings, and she hoped that the relationship would turn into a long-term relationship.

By January 22, 2010, the date of the assault, complainant and appellant had been engaged in a sexual relationship for half a week. On January 21, appellant spent the night at complainant's home, and on the morning of January 22, they had sexual intercourse. Later in the day, appellant and complainant picked up appellant's children at day care and brought them back to complainant's home, where all of the children ate dinner. Complainant agreed that this was typical of how appellant, complainant, and their children had spent the prior week.

Later in the evening, appellant went into the bedroom and spoke to his wife by telephone for approximately 20 minutes. When appellant came out of the bedroom, he was upset, started yelling, and tried to wake up his children. Appellant stated "I don't know why I'm messing with you. I'm married." When complainant discovered that appellant was still with his wife, she told him that she wanted to break up with him.

Appellant came up to complainant and hit her in the face. Appellant grabbed complainant by the neck, pushed her against the wall, and continued yelling at her. Appellant then dragged complainant to the bedroom and pushed her onto the bed: when complainant tried to get up, appellant pushed her down again. Appellant told complainant that if she ever called the police, he would break her in half and kill her and her mother.

At trial, a 911 dispatcher testified that she received a call from one of complainant's neighbors. The neighbor stated that she could hear a woman and children

yelling. The neighbor also stated that she could hear things being thrown around and a man threatening to harm the children. Police were dispatched to complainant's building to investigate.

The responding officers gained entry to the building and heard a man yelling, a woman crying, and children yelling in complainant's apartment. The responding officers knocked at the door and waited two or three minutes for a response. During that time, the apartment became quiet. Eventually, the responding officers were allowed to enter the apartment, where they saw appellant and complainant.

One of the responding officers spoke to complainant, who said that she and her boyfriend were arguing about breaking up because he was married. At trial, the responding officer recounted complainant's description of the assault, which largely comported with her testimony at trial. The responding officer testified that he saw redness on the complainant's upper chest area and a small abrasion on her lip.

Later in the day, a family-violence officer conducted a telephone interview with complainant. The family-violence officer testified to complainant's description of the assault, which largely tracked her testimony at trial. But according to the family-violence officer, complainant stated that appellant hit her two times in the lip.

Over appellant's objection, the district court allowed the state to introduce testimony regarding a prior domestic assault involving appellant's then-girlfriend and now wife. Before the testimony was introduced, however, the district court instructed the jury that "[t]his evidence is being offered for the limited purposes of demonstrating the nature and extent of the relationship between [appellant] and [complainant]." An

investigating officer testified that, on December 18, 2006, he was dispatched to a disturbance, where he observed that a man was holding a woman by her sleeve and swinging her around and that the woman was holding a baby in her arms. The investigating officer was unable to identify the man who perpetrated the prior assault. But he testified from his report that the man had the same name and date of birth as appellant. The investigating officer did not testify to the identity of the woman or her relationship to appellant.

The jury found appellant guilty. The district court rejected appellant's request for a downward dispositional or durational departure and sentenced appellant to a presumptive executed term of 30 months. This appeal follows.

D E C I S I O N

I

First, appellant contends that sufficient evidence does not support his conviction of felony domestic assault. When reviewing a challenge to the sufficiency of the evidence, this court is limited to ascertaining whether the jury could have found, after giving due regard to the presumption of innocence and the requirement of proof beyond a reasonable doubt, that appellant was guilty of the offense. *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007). This court carefully reviews the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jury to convict appellant. *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). This court assumes that the jury credited the state's witnesses and draws reasonable inferences in favor of the state. *State v. Jackson*, 726 N.W.2d 454, 460 (Minn. 2007).

An individual may be convicted of domestic assault if he assaults “a family or household member.” Minn. Stat. § 609.2242, subd. 1 (2008). “Family or household member[s]” include “persons involved in a significant romantic or sexual relationship.” Minn. Stat. § 518B.01, subd. 2(b)(7) (2008). The statute does not define a “significant romantic or sexual relationship,” but it instructs the court to consider a number of factors, including (1) the length of the relationship, (2) the type of relationship, and (3) the frequency of interaction. *Id.*, subd. 2(b) (2008).

Appellant contends that the evidence is insufficient to establish that complainant’s and appellant’s relationship was “significant.” Appellant states that, at the time of the assault, he had only known complainant for a brief period of time. They started a friendship in the summer of 2009, but the friendship ended when appellant married another woman later that summer. And appellant and complainant only rekindled the friendship a few weeks before the assault. Appellant also maintains that between the rekindling of their friendship and the night of the assault, he and complainant had limited interactions with one another. He points to complainant’s testimony that she and appellant only saw each other “maybe twice a week,” that their relationship became sexual approximately half a week before the assault, and that they had sexual intercourse only a few times. Appellant further asserts that the relationship had not become serious by the time of the assault. He cites complainant’s testimony that she had perhaps started to have feelings—but not strong feelings—for appellant.

The state responds that the evidence is sufficient to establish that the relationship was significant. The state asserts that appellant’s and complainant’s relationship went

beyond occasional sexual encounters and involved familial interactions between appellant, complainant, and their respective children. Complainant testified that, by the week of the assault, appellant was visiting her home almost every day, and that, on the date of the assault, appellant and complainant picked up appellant's children from day care and brought them to complainant's home, where all of them spent a typical night together. The state also maintains that appellant and complainant had developed "real feelings" for each other by the time of the assault. Complainant testified that, as early as the summer of 2009, complainant had feelings for appellant, but she did not act upon those feelings because appellant was married. And complainant testified that, by the date of the assault, she once again had feelings for appellant, she believed that he reciprocated those feelings, and she thought that they could be starting a long-term relationship. Finally, the state notes that complainant described appellant as her "boyfriend" when questioned by the police and that complainant stated that she wanted to "break up" with her boyfriend, indicating the seriousness of the relationship.

The relationship between appellant and complainant was admittedly short. But neither the statute nor this court's opinions indicate that a romantic or sexual relationship must span a specific time period for it to be considered significant. *See* Minn. Stat. § 518B.01, subd. 2(b) (indicating that the length of a romantic or sexual relationship is only one factor in determining whether it is significant). On this record, we conclude that the jury had sufficient evidence to support a finding that appellant and complainant were engaged in a significant romantic or sexual relationship. Complainant testified that she and appellant had feelings for one another, she told police that appellant was her

boyfriend, and she hoped she would have a long-term relationship with appellant. Complainant also testified that, by the date of the assault, appellant was visiting her home daily, they were spending time with each others' children, they had started engaging in sexual relations, and appellant had spent the night at complainant's home. Under the circumstances, the evidence supports the finding that, although the parties' relationship was relatively short, it was also relatively intense and therefore constituted a "significant romantic or sexual relationship," which establishes that complainant was appellant's "family or household member." See Minn. Stat. § 518B.01, subd. 2(b).

II

Next, appellant contends that the district court abused its discretion by admitting, as relationship evidence, testimony from the investigating officer who saw appellant assault his wife. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Appellant bears the burden of demonstrating that the district court abused its discretion and that he was thereby prejudiced. *Id.* An appellate court will only reverse a conviction based on an evidentiary ruling "when the error substantially influences the jury's decision." *State v. Moua*, 678 N.W.2d 29, 37 (Minn. 2004) (quotation omitted).

"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, . . . misleading the jury, or by other considerations such as undue delay or presentation of

cumulative evidence.” Minn. Stat. § 634.20 (2008). The purpose of admitting relationship evidence is “to illuminate the history of the relationship [and] to put the crime charged in the context of the relationship between the two.” *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). “[E]vidence showing how a defendant treats his family and household members, such as his former spouses or other girlfriends, sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

At trial, defense counsel objected to the introduction of the investigating officer’s testimony regarding the prior assault, arguing that it lacked probative value and unduly prejudiced appellant. But the district court overruled the objection and permitted the investigating officer to testify based on the state’s offer of proof that appellant was the perpetrator and his then-girlfriend and current wife was the victim of the prior assault. The district court’s ruling was consistent with the state’s offer of proof: had the investigating officer’s testimony corresponded to the offer of proof, it would have been probative of how appellant treated those close to him, and it would not have been unduly prejudicial because appellant had notice of the prior assault.

The problem here, however, is that the investigating officer did not testify that appellant had any relationship with the victim of the prior assault, let alone that she was previously his girlfriend and was now his wife. But even though defense counsel initially objected to the introduction of the relationship evidence, he did not move to strike the investigating officer’s testimony once it became evident that the state had failed to lay the

foundation for it to be admitted as relationship evidence. For this reason, the district court's failure to sua sponte strike the investigating officer's testimony must be reviewed under a plain-error analysis. *See State v. Vick*, 632 N.W.2d 676, 684–85 (Minn. 2001) (stating that appellate courts will reverse the unobjected-to admission of evidence only “if there is (1) error, (2) that is plain, and (3) the error affects the defendant's substantial rights”).

Without evidence of the relationship between appellant and the victim of the prior assault, the investigating officer's testimony did not fall within the scope of Minn. Stat. § 634.20, which allows the admission of evidence of similar conduct against “other family or household members.” Nor was the investigating officer's testimony probative of appellant's and complainant's relationship. Rather, the investigating officer's testimony was simply prejudicial to appellant, showing that he had a history of violence, particularly a history of violence against women. For these reasons, in light of the state's failure to elicit the identity of the woman who appellant assaulted, the district court's failure to strike the investigating officer's testimony was plain error.

“An error affects a defendant's substantial rights when there is a reasonable likelihood that the error substantially affected the verdict.” *State v. Brown*, 792 N.W.2d 815, 824 (Minn. 2011) (quotation omitted). Under the circumstances, however, the failure to strike the investigating officer's testimony did not affect appellant's substantial rights.

First, the district court clearly instructed the jury that the investigating officer's testimony was being introduced to illuminate the nature and extent of the relationship

between appellant and complainant and that the jury should not convict appellant based on the prior assault. This court presumes that the jury followed the district court's instructions. *State v. Budreau*, 641 N.W.2d 919, 926 (Minn. 2002). In light of the evidence, the district court's instruction was confusing. The jury may have wondered how the investigating officer's testimony could have illuminated the nature and extent of the relationship between appellant and complainant when there was no evidence presented about the relationship between the appellant and the victim of the prior assault. In an effort to make sense of the jury instructions and the evidence presented, the jury may have incorrectly assumed that the victim of the prior assault was the complainant. But even if the jury did so, the panel must presume that the jury followed the district court's instructions and did not convict appellant based on the prior assault.

Moreover, as appellant acknowledges, the record contains significant evidence of appellant's guilt. The evidence shows that a neighbor heard the assault taking place and immediately reported it; complainant cooperated with the responding officer and the family-violence officer who were investigating the crime; and complainant gave a consistent account of the assault to police and to the jury. On this record, the introduction of the investigating officer's testimony did not substantially affect the verdict and does not provide a basis for overturning appellant's conviction.

Affirmed.