STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0672

State of Minnesota,
Respondent,

vs.

Matias Arkiel Jefferson,
Appellant.

Filed April 7, 2014
Affirmed
Kirk, Judge

Hennepin County District Court
File No. 27-CR-12-20218

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and Kirk, Judge.

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

KIRK, Judge

On appeal from his convictions of violating an order for protection (OFP) and a domestic abuse no contact order (DANCO), appellant argues that the district court abused its discretion by admitting evidence of three prior incidents involving the same victim. We affirm.

FACTS

Appellant Matias Arkiel Jefferson and J.V. began a relationship in 2005, and their daughter was born in 2006. Their relationship became rocky in 2010 and eventually ended. On May 7, 2012, appellant appeared before the district court for a first appearance on a domestic assault case where J.V. was the victim. During the hearing, the district court issued a DANCO prohibiting appellant from having any contact with J.V. Appellant signed the DANCO to acknowledge he had been served with it.

On May 16, appellant and J.V. appeared before the district court for a hearing in a different case regarding J.V.'s request to extend an ex parte OFP. The district court issued an OFP prohibiting appellant from having contact with J.V. and appellant signed the OFP. After the hearing was over, J.V. left the district court and walked toward Nicollet Avenue to catch a bus. As she was walking, appellant approached her from behind, tapped her on the back, and said, "Hey." When J.V. turned around, appellant told her that it was a good thing that she took their daughter off the OFP. J.V. felt that he was being sarcastic. Appellant also said something to J.V. that she felt implied he would

kidnap their daughter and take her to California. Appellant asked J.V. for a pen, she gave him one, and he walked away.

Assistant Minneapolis City Attorney Kathy Rygh was walking toward Nicollet Mall on her lunch break on May 16 when she noticed appellant talking to a woman. Rygh recognized appellant because she was the prosecutor at his May 7 hearing. As Rygh walked closer, she recognized J.V. as the woman to whom appellant was talking. After appellant and J.V. parted ways, Rygh approached J.V. and asked her if the man she had been talking to was appellant; J.V. confirmed that he was. Rygh asked J.V. if there was a no-contact order in place and J.V. confirmed that there was. Rygh also asked if appellant had threatened her and J.V. replied that he had not. When Rygh returned to her office, she reported the incident to a police officer and asked her to file a report. The police officer later contacted J.V., who confirmed that appellant had approached her.

In June, respondent State of Minnesota charged appellant with one count of violation of the DANCO and one count of violation of the OFP. The complaint alleged that appellant knowingly violated the DANCO and the OFP when he had contact with J.V. on May 16.

Prior to trial, the state moved to admit evidence of ten incidents of domestic abuse between appellant and J.V. under Minn. Stat. § 634.20 (2010). The district court found that evidence of all ten incidents was admissible. However, the district court revisited its ruling the next day, stating that it was no longer sure that Minn. Stat. § 634.20 applied. After analyzing the admissibility of the evidence under both Minn. Stat. § 634.20 and

Minn. R. Evid. 404(b), the district court found that evidence of five of the incidents was admissible.

The district court held a jury trial in November. In addition to testifying about the events of May 16, J.V. testified about three incidents involving appellant. The district court gave a cautionary instruction to the jury that evidence of the three incidents was offered only for the limited purpose of assisting the jury in determining whether appellant committed the charged offenses.

First, J.V. testified that on May 3 she confronted appellant after she saw him take a credit card and a phone out of her purse. When J.V. tried to retrieve her things from appellant, he grabbed her knees and slammed the back of her head against the floor. J.V. testified that appellant punched her, kicked her, and hit her over the head with a skillet. J.V. reported the incident to the police and was treated at the hospital. The following day, she filed a petition for an ex parte OFP against appellant.

Second, J.V. testified that she contacted police on August 17 because she had received several threatening phone calls from appellant. Among other things, appellant threatened J.V. not to cooperate in the prosecution against him. Appellant asked her to not appear in court and to lie and say she was talking to his brother on May 16 when Rygh saw her.

Finally, J.V. testified that appellant called her on August 21 and asked to meet with her to talk about their daughter. J.V. agreed and went outside her apartment to meet him. J.V. saw appellant walking toward her and then felt someone hit her in the back of her head. As J.V. fought back, she saw that a woman had attacked her. J.V. testified that

appellant punched her while the woman pulled her hair. Appellant and the woman fled when a neighbor said that she was calling the police.

Appellant testified at the trial and denied having any contact with J.V. after the May 16 hearing or on August 21. The jury found appellant guilty of both counts alleged in the complaint. This appeal follows.

D E C I S I O N

In general, "[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b). Such evidence may be admissible for other reasons, "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." *Id.* Appellate courts review the district court's decision to admit other-acts evidence for an abuse of discretion. *State v. Blom*, 682 N.W.2d 578, 611 (Minn. 2004). On appeal, the defendant must demonstrate that the district court erred by admitting the evidence and that he was prejudiced by its admission. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998).

Because it is unclear whether the district court's ultimate decision that evidence of the three incidents was admissible was based on Minn. R. Evid. 404(b) or on Minn. Stat. § 634.20, we address both bases for admission.

A. The evidence is not admissible under Minn. Stat. § 634.20.

Minnesota appellate courts have traditionally treated evidence that illuminates the history of the defendant and the victim's relationship differently than other evidence offered under Minn. R. Evid. 404(b). *State v. McCoy*, 682 N.W.2d 153, 161 (Minn.

2004). This different treatment is appropriate because "[d]omestic abuse is unique in that it typically occurs in the privacy of the home, it frequently involves a pattern of activity that may escalate over time, and it is often underreported." *Id.* Under Minn. Stat. § 634.20, "[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."

The district court was unsure whether Minn. Stat. § 634.20 applied in this case because the statute only applies to evidence of similar conduct that the accused commits "against the victim of domestic abuse." The statute provides that "domestic abuse" has "the meaning[] given under section 518B.01, subdivision 2 [2010]." Minn. Stat. § 634.20. Under Minn. Stat. § 518B.01, subd. 2(a), "domestic abuse" includes "physical harm, bodily injury, or assault," "the infliction of imminent physical harm, bodily injury, or assault," and terroristic threats, criminal sexual conduct, or interference with an emergency call.

Here, appellant was charged with violating the OFP and the DANCO by approaching J.V. and talking to her on May 16. There is no evidence that appellant physically harmed J.V. or threatened her on that date. *See* Minn. Stat. § 518B.01, subd. 2(a)(1), (3). And there is no evidence that appellant inflicted fear of imminent physical harm, bodily injury, or assault merely by approaching J.V. *See id.*, subd. 2(a)(2); *Kass v. Kass*, 355 N.W.2d 335, 337 (Minn. App. 1984) ("The use of the phrase 'infliction of fear' in the statute implies that the legislature intended that there be some overt action to indicate that appellant *intended* to put respondent in fear of imminent physical harm.").

Thus, appellant's underlying conduct in this specific case does not meet the definition of "domestic abuse" under Minn. Stat. § 518B.01, subd. 2(a). *See State v. Barnslater*, 786 N.W.2d 646, 651 (Minn. App. 2010) ("[T]he plain language of section 634.20 establishes that the admissibility of relationship evidence is based on whether the accused's *underlying conduct* constitutes domestic abuse under section 518B.01, subdivision 2(a)."), *review denied* (Minn. Oct. 27, 2010); *State v. McCurry*, 770 N.W.2d 553, 560 (Minn. App. 2009) (concluding that Minn. Stat. § 634.20 only applies when the charges involve domestic abuse).

B. The evidence is admissible under Minn. R. Evid. 404(b).

Before admitting evidence under Minn. R. Evid. 404(b), the district court must consider whether: (1) the state gave notice of its intent to introduce the evidence; (2) the state clearly indicated what the evidence will be offered to prove; (3) clear and convincing evidence establishes that the defendant participated in the act; (4) the evidence is relevant and material; and (5) the evidence's probative value is outweighed by the potential prejudice to the defendant. *Angus v. State*, 695 N.W.2d 109, 119 (Minn. 2005). When it is unclear whether evidence is admissible under Minn. R. Evid. 404(b), "the benefit of the doubt should be given to the defendant and the evidence should be excluded." *Kennedy*, 585 N.W.2d at 389.

"Consistent with Minn. R. Evid. 404(b), relationship evidence is character evidence that may be offered to show the strained relationship between the accused and the victim and is relevant to establishing motive and intent and is therefore admissible." *State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009) (quotation omitted). Evidence of a

strained relationship also has probative value by serving to "plac[e] the incident with which defendant was charged in proper context." *State v. Bauer*, 598 N.W.2d 352, 364 (Minn. 1999). "Prior to admitting such evidence, the [district] court must determine that there is clear and convincing evidence that the defendant committed the prior bad act and that the probative value of the evidence outweighs any potential for unfair prejudice." *Id.* (quotation omitted).

Appellant contends that the district court abused its discretion by allowing the state to introduce evidence of the three incidents because the state failed to establish that the evidence was relevant and material and it was highly prejudicial. In support of its motion to admit this evidence, the prosecutor argued that it was admissible under Minn. R. Evid. 404(b) because it provided context to appellant and J.V.'s relationship. The district court found that the state provided notice of its intent to offer evidence of the incidents and that the relationship evidence was relevant because it gave context to appellant and J.V.'s relationship, particularly since appellant's defense was that no contact occurred between them. Finally, the district court found that the probative value of the evidence was not outweighed by the potential for unfair prejudice.

We conclude that the evidence of the three incidents is relevant to show the strained relationship between appellant and J.V., and it gives important context to the offense in relation to the historic pattern of abuse that has occurred between appellant and J.V. The May 3 incident led J.V. to seek the OFP, which appellant was convicted of violating in this case. In addition, the August 17 and 20 incidents involve appellant violating both the OFP and the DANCO. These incidents are relevant because appellant

intentionally violated the orders prohibiting him from having contact with J.V., which is similar to what occurred in this case. Appellant's threats to J.V. to change her story about the May 16 incident are evidence of appellant's consciousness of his guilt and his motive to keep J.V. quiet. *See State v. Atkinson*, 774 N.W.2d 584, 594 (Minn. 2009) ("Threats made by a defendant against a witness may be relevant to show consciousness of guilt.").

Finally, the probative value of the evidence of the three incidents is not outweighed by the potential prejudice to appellant because it gave context to the crimes in relation to appellant's history of committing domestic abuse against J.V. and violating orders prohibiting him from having contact with her. Therefore, the evidence was admissible under Minn. R. Evid. 404(b). The district court did not abuse its discretion by admitting evidence of the three incidents.

Affirmed.