STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1686

State of Minnesota,
Respondent,

vs.

David Easter,
Appellant

Filed January 13, 2009
Affirmed
Ross, Judge

Hennepin County District Court
File No. 06008439

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellant Public Defender, Roy Spurbeck, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Huspeni, Judge.*

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

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

ROSS, Judge

This appeal arises from David Easter's numerous unwelcome telephone and e-mail contacts with his former girlfriend extending over a lengthy period and occurring despite orders for protection that prohibited the contacts. The district court convicted Easter of two counts of felony stalking or harassment, and Easter challenges the district court's admission of similar-conduct evidence, the sufficiency of the state's evidence, and the district court's sentence barring him from filing bad-faith orders for protection or harassment petitions. Because the similar-conduct evidence would have been admissible as relationship evidence under rule 404(b) of the Minnesota Rules of Evidence, because the evidence was sufficient, and because the district court did not abuse its discretion in sentencing, we affirm.

FACTS

David Easter and M.E.S. started dating in 2002. Their relationship ended briefly in February 2003, later resumed, then ended permanently in July 2003. Four days after their relationship ended, M.E.S. petitioned the district court for a harassment restraining order, alleging that Easter sent her dozens of messages, that he appeared uninvited at her home and refused to leave, that he immediately disregarded a Plymouth police officer's directive not to contact her, and that she was frightened by Easter's persistent, unwelcome contact. The district court granted the petition in August 2003, and ordered Easter to avoid harassing M.E.S. by having no contact with her "in person, by telephone,

or by other means or persons" for two years. The restraining order lasted two years, and it was later renewed for another two years.

Easter consistently violated the restraining order by telephoning, e-mailing, and sending cellular text messages to M.E.S. These violations resulted in convictions after Easter entered an *Alford* plea in December 2003 for one violation, and a guilty plea for another violation which occurred in March 2004. M.E.S. tried unsuccessfully to avoid Easter's attempts to contact her. She changed her home and cellular telephone numbers, purchased her telephone provider's security screening service, and relocated her work e-mail address to a separate server. She reported Easter's contact to the police, and filed police reports in Plymouth, Fridley, and Brooklyn Park for the various unwelcome encounters initiated by Easter.

Despite the convictions and her private efforts, M.E.S. continued to receive telephone calls and hang-ups all apparently from Easter. She received multiple e-mails from an unidentified person that included details from her relationship with Easter, like nicknames, events, and places that she told Easter she wanted to visit. She kept telephone logs and copies of the e-mails to give to the police. She received e-mails from Easter that he somehow transmitted using M.E.S.'s own e-mail account.

From December 2005 to January 2006, M.E.S. received fourteen telephone calls at her workplace. She reported these calls to the Brooklyn Park police department. She explained that in some of the calls the caller hung up or remained on the line in silence, and in others she recognized Easter's voice. Brooklyn Park police traced these calls to pay phones at the Oasis Market in St. Michael and a Mobile gas station in Albertville.

On February 3, 2006, Brooklyn Park police staked out these locations and saw Easter use the Oasis Market pay phone at the same time of day that M.E.S. had received calls from that telephone. The officers arrested Easter. The officers searched Easter's person and car and found a cellular telephone, telephone cards, copies of e-mails written from M.E.S's account that she had not written, and other documents relating to M.E.S.

The state charged Easter with two counts of felony stalking or harassment. Before trial, the state moved to introduce similar-conduct evidence under Minnesota Statutes section 634.20 (2008). The district court admitted all of the state's proffered evidence except proof of Easter's alleged sexual assault against M.E.S. Easter chose to have a stipulated-facts bench trial. The stipulated facts included the similar-conduct evidence, Brooklyn Park police reports, and the items seized from Easter's car. The district court found Easter guilty of both counts. The district court imposed a five-year prison sentence, which it stayed on several conditions including that Easter file no bad-faith petitions for orders for protection or harassment. Easter appeals.

D E C I S I O N

I

Easter contends that the district court abused its discretion by admitting similar-conduct evidence under Minnesota Statutes section 634.20 when M.E.S. was not a domestic-abuse victim. District courts have discretion to make evidentiary rulings. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). An appellant who challenges an evidentiary ruling must show that the district court abused its discretion and prejudiced the appellant. *Id.* If the district court erroneously admits evidence, then we will

determine if a reasonable possibility existed that the evidence "significantly affected the verdict." *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994).

Easter's challenge to the district court's use of section 634.20 involves a question of statutory construction, which we review de novo. *Houston v. Int'l Data Transfer Corp.*, 645 N.W.2d 144, 149 (Minn. 2002). We interpret a statute first by determining whether its language is clear on its face. Minn. Stat. § 645.16 (2008). If we can reasonably interpret the statute in more than one way, then the statute is ambiguous. *State v. Johnson*, 743 N.W.2d 622, 626 (Minn. App. 2008). We interpret statutes to give effect to all provisions and if possible prevent any "word, phrase, or sentence" from being "superfluous, void, or insignificant." *Id.* (quotation omitted).

Section 634.20 allows the admission of similar-conduct evidence "by the accused against the victim of domestic abuse, or against other family or household members" unless substantial unfair prejudice outweighs the evidence's probative value. The legislature has identified two relevant groups concerning similar-conduct evidence: domestic abuse victims, and family or household members. Domestic abuse is abuse "committed against a family or household member by a family or household member" involving "(1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats . . . criminal sexual conduct . . . or interference with an emergency call." Minn. Stat. § 518B.01, subd. 2(a) (2008). A family member is a current or former spouse, parent, child, or blood relative. *Id.*, subd. 2(b) (2008). Household members include people currently or

formerly living together, people with a child in common, a couple during pregnancy, and people "involved in a significant romantic or sexual relationship." *Id.*

The district court concluded that M.E.S. was not a domestic abuse victim under the statute but rather a family or household member based on her past romantic relationship with Easter. This application relies on an interpretation that does not sufficiently account for the word "*other*" in the statute. *See Johnson*, 743 N.W.2d at 626 (noting that statutory interpretation should prevent words from being insignificant or superfluous). The phrase "other family or household members" refers to someone other than the abuse victim, implying that a domestic abuse victim exists.

If the "other family or household member" is not a person other than a domestic abuse victim, then the statute is redundant. Consider a domestic assault trial involving a couple with a history of domestic abuse. The district court can admit evidence of prior similar conduct because one member of the couple is a "victim of domestic abuse." Minn. Stat. § 634.20. The district court could also admit the similar-conduct evidence under the "family or household member" category because the people are "involved in a significant romantic or sexual relationship." *Id.*; Minn. Stat. § 518B.01, subd. 2(b). This interpretation makes the phrase, "other family or household members," duplicative because the domestic abuse victim qualifies under either section.

In this case, M.E.S. is the victim of *harassment*, which does not fall within the domestic abuse definition. *See* Minn. Stat. § 518B.01, subd. 2(a) (defining domestic abuse). Similarly, because no one is a victim of domestic abuse, M.E.S. is not a "family or household member" under section 634.20. We conclude that the district court abused

its discretion by applying section 634.20 to admit the evidence when it did not consider M.E.S. to be a domestic abuse victim.

But this does not require us to hold that the evidence was erroneously admitted. *Post*, 512 N.W.2d at 102 n.2. The district court still had the discretion to admit the evidence as relationship evidence because it would illuminate their relationship and place the charged incident in context. *State v. Bauer*, 598 N.W.2d 352, 364 (Minn. 1999). We must consider the evidence under rule 404(b) of the Minnesota Rules of Evidence. *Id.* The district court may admit the evidence if the state (1) provides "notice of its intent to admit the evidence consistent with the rules of criminal procedure"; (2) "clearly indicates what the evidence will be offered to prove;" (3) shows that the other incident and the defendant's participation "are proven by clear and convincing evidence;" (4) shows that "the evidence is relevant" to the case, and (5) shows that the evidence's probative value "is not outweighed by its potential for unfair prejudice to the defendant." Minn. R. Evid. 404(b).

The state's evidence meets rule 404(b)'s requirements. The state provided notice indicating what the conduct evidence would prove. It was relevant to the harassment charges because it shows a pattern of calls and e-mails to M.E.S. and her fears about her safety. *See* Minn. Stat. § 609.749, subd. 2(4)–(5) (2008) (providing that harassment can be "repeatedly mak[ing] telephone calls" or repeatedly making or causing a person's telephone to ring). The evidence is not highly prejudicial because it is limited to calls that Easter likely made from December 2005 to January 2006.

Easter contends that the evidence fails to meet the clear and convincing standard because he had a stipulated-facts trial, and in this situation, the standard can be met only through live testimony. The clear and convincing standard "requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (quotation omitted). Easter cites *State v. Mayhorn* to support his argument that the standard is unmet. 720 N.W.2d 776 (Minn. 2006). But his reliance on *Mayhorn* is misplaced. In *Mayhorn*, the supreme court noted that certain relationship evidence did not meet the clear and convincing standard because the state did not connect the relationship evidence to the defendant. *Id.* at 784–85. *Mayhorn* involved only a single incident rather than repeated incidents. Unlike in *Mayhorn*, Easter engaged in a pattern of conduct that resulted in two prior convictions, numerous reports to police, and records of calls and e-mails. *See Kennedy*, 585 N.W.2d at 389 (noting that if "the truth of the facts sought to be admitted is highly probable," then the standard is met (quotation omitted)).

To preserve issues for appeal, Easter chose a stipulated-facts trial rather than challenging this evidence through cross-examination in a pre-trial hearing or at trial. But now he challenges these issues on appeal based on the fact that the district court took no testimony. The relationship evidence—police documents, e-mails, prior convictions, and phone bills—make the truth of the facts highly probable and meet the clear and convincing standard. The evidence is admissible under Minn. R. Evid. 404(b) regardless of the error in admitting the evidence as similar-conduct evidence under section 634.20. The error was harmless, and the verdict was unaffected.

II

Easter challenges the sufficiency of the evidence. The challenge requires us to painstakingly analyze "the record to determine whether the evidence, when viewed in the light most favorable to the conviction," sufficiently supports the verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We will "assume that the [fact-finder] believed" the evidence supporting the verdict "and disbelieved any evidence to the contrary." *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). If the fact-finder "could reasonably conclude that the defendant was guilty of the offense charged," given the facts and any legitimate interferences, then we will not disturb the verdict. *Bernhardt v. State*, 684 N.W.2d 465, 476–77 (Minn. 2004).

To prove Easter guilty of harassment, the state must show that he (1) knew or should have known that his conduct would cause M.E.S. "to feel frightened, threatened, oppressed, persecuted, or intimidated," (2) caused this reaction, (3) repeatedly made phone calls or caused M.E.S. to make calls to Easter regardless of whether any conversation occurred, and (4) had a "previous qualified domestic violence-related offense conviction." Minn. Stat. § 609.749, subds. 1, 2(4), 4(a) (2008). For the second harassment charge, Easter must have committed acts that meet elements one, two, and four above, as well as made or caused M.E.S.'s phone to ring repeatedly. *Id.*, subd. 2(5) (2008).

Easter argues only that M.E.S. did not react in a "frightened, threatened, oppressed, persecuted, or intimidated" manner because the stipulated facts provide no subjective reactions. The evidence, however, sufficiently proves that M.E.S. reacted in a

manner that satisfies the first element. M.E.S. obtained a restraining order against Easter, and her petition alleged that she "fears for her safety" and that she "is afraid of [Easter]." Also, she reported the December 2005 to January 2006 incidents to the police. Police learned that M.E.S. had "a tracer on her phone line through Qwest." M.E.S. also kept phone logs of her received messages and calls. These information-collecting actions support the factual conclusion that M.E.S. feared Easter.

Additionally, M.E.S. repeatedly told police that she feared Easter. She told Plymouth police that Easter's actions might "result in violent harmful actions towards [her]." She told Fridley police that "I am petrified of this guy," and "I'm scared to death of this guy." Brooklyn Park police noted that "she is in fear that something is going to happen to her because it seems he is getting more possessive with his attempts to contact her." These statements plainly support a finding that M.E.S. feared Easter.

Easter also knew that his actions caused M.E.S. concern as established by his two prior convictions for similar conduct and M.E.S.'s order for protection against him. Brooklyn Park police arrested Easter at the Oasis Market pay phone from which M.E.S. received numerous hang-up calls from December 2005 to January 2006. Easter's use of the pay phone despite having a working cell phone supports the obvious conclusion that he was aware that his actions caused M.E.S. concern. The evidence sufficiently supports the guilty verdict against Easter for harassment.

III

Easter also challenges the conditions that the district court imposed as part of his sentence. We review a district court's sentencing decisions for an abuse of discretion.

State v. Franklin, 604 N.W.2d 79, 82 (Minn. 2000). The district court has limited power regarding sentencing. *Id.* Probation conditions need to "reasonably relate[] to" the sentence's purpose and must not unduly restrict "the probationer's liberty or autonomy." *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989). Although probationers do not surrender their constitutional rights, they are subject to limitations that ordinary citizens are not. *Id.* at 516. If the probation conditions involve fundamental rights, we review carefully the district court's discretion in establishing these conditions. *Id.*

Easter contends that by prohibiting bad-faith filings of orders for protection, the district court chills his First Amendment rights and bars his access to the courts. But we hold that the district court's sentence was not an abuse of discretion. The district court banned only bad-faith filings, not reasonable or plausible or good-faith filings. Easter has no First Amendment interest in making bad-faith filings to harass M.E.S. Easter has shown that civil fines likely would not deter him; he has received district court warnings for "bringing frivolous actions" against M.E.S. in other jurisdictions. The restriction on bad-faith filings reasonably relates to the purpose of Easter's sentence and does not unduly restrict his liberty.

Affirmed.