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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2138**

State of Minnesota,  
Respondent,

vs.

Edward Leroy Milner,  
Appellant.

**Filed January 21, 2014  
Affirmed  
Hooten, Judge**

Olmsted County District Court  
File No. 55-CR-11-5555

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Senior Assistant County  
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Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hooten, Judge; and  
Toussaint, Judge.\*

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

## UNPUBLISHED OPINION

**HOOTEN**, Judge

Appellant challenges his burglary and felony domestic-assault convictions on the basis that, during his jury trial, the district court erred in allowing evidence of appellant's prior domestic assault of the same victim. Appellant also challenges his contempt conviction based on statements he made during his sentencing hearing. Because the district court did not abuse its discretion in allowing evidence of appellant's prior domestic assault against the same victim and the contempt order was not arbitrary, capricious, or oppressive, we affirm.

### FACTS

Appellant Edward Milner and V.T. met in 2001 and began a romantic relationship years later. They were living together at a Rochester inn on August 5, 2011, when Milner became upset with V.T. After an argument, V.T. left the inn and went to an apartment with her friend, A.G. That evening, while V.T. and A.G. were walking to a convenience store, Milner showed up. V.T. became afraid and tried to call 911. Milner took V.T.'s phone from her, broke it, and left.

Two nights later, V.T. and A.G. were at A.G.'s apartment when they heard a knock at the door. A.G. asked who was there, and Milner responded, "It's Eddie. Open the door." A.G. refused, and Milner got angry and started yelling. Neither V.T. nor A.G. told Milner he could enter, but Milner eventually got inside, passed A.G., and rushed to the bed where V.T. was lying down. He began punching V.T. in the face. V.T. turned

toward a wall twice to try and stop Milner's attack, but he pulled her back and continued hitting her.

Olmsted County charged Milner with two counts of first-degree burglary in violation of Minn. Stat. § 609.582, subd. 1(a) and (c) (2010), and one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2010), but the state dismissed one burglary count. At trial and over Milner's objection, the district court permitted the state to introduce evidence of appellant's prior conviction for assault arising out of an incident in 2006 during which Milner threw a beer bottle at V.T. and hit her in the head. The jury found Milner guilty of burglary and felony domestic assault.

When Milner appeared pro se at his sentencing hearing, he argued at great length for a downward departure. Eventually the district court said, "Mr. Milner, you've talked for two and a half hours now and now be quiet while I talk. Do you understand me on that?" The district court then began explaining its rationale for not departing, but Milner started arguing again.

THE COURT: Mr. Milner, you must stop talking. If you keep—

DEFENDANT: Aaaaah.

THE COURT: Mr. Milner, if you keep talking I'm going to hold you in contempt of court and I'll—

DEFENDANT: Ahhh.

THE COURT: —and I'll add some time to your sentence that you don't want to do—

DEFENDANT: Aaaaah.

THE COURT: —because you don't follow the Court's direction. Okay?

DEFENDANT: Aaaah. This just ain't right, man.

The district court returned to its explanation until Milner interrupted again.

THE COURT: Mr. Milner. Mr. Milner, if you talk one more time I am going to impose 30—

DEFENDANT: Uhh.

THE COURT: —30 additional—Do you—I’m going to impose 30 additional days of jail time because you’re not—

DEFENDANT: I already got 90 by [Judge] Williamson.

THE COURT: Okay. Well, you just got—

DEFENDANT: I mean sh-t, man.

THE COURT: Mr. Milner, you just talked yourself into another month incarcerated at the end of any other sentences you do. So this will be on top of the prison sentence. It’ll be on top—

DEFENDANT: Whatever, man.

THE COURT: It’ll be on top of whatever Judge Williamson does and, you know, I wish you hadn’t done that.

The district court sentenced Milner to 78 months imprisonment and, in addition, 30 days for contempt. This appeal follows.

## DECISION

### I.

Milner’s first argument is that the district court erred in admitting testimony about the July 2006 assault as relationship evidence under Minn. Stat. § 634.20 (2010). We review district court rulings on relationship evidence for abuse of discretion. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008). Milner has the burden of proving that admitting the relationship evidence was erroneous and prejudicial. *See id.* Section 634.20 provides in relevant part that “[e]vidence 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.” Milner does not contest that evidence of the 2006 assault met the requirements of “similar

conduct” or “domestic abuse.” Rather, his sole argument is that the district court abused its discretion in applying the statutory balancing test.

Milner asserts that the probative value of the relationship evidence was low because V.T.’s statements to police and at trial regarding the 2011 assault were consistent and such prior relationship evidence was not necessary to bolster her testimony. But “[e]vidence that helps to establish the relationship between the victim and the defendant or which places the event in context bolsters its probative value.” *State v. Barnslater*, 786 N.W.2d 646, 652 (Minn. App. 2010) (quotation omitted), *review denied* (Minn. Oct. 27, 2010). More specifically, “evidence showing how a defendant treats his family or household members . . . 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). Accordingly, the probative value of V.T.’s testimony concerning the 2006 assault did not depend on whether she testified consistently or needed bolstering. The relationship evidence was inherently probative because it illuminated the history of Milner and V.T.’s relationship and put the issues at trial in context.

Milner also emphasizes that the prior assault was five years old and involved conduct of a different nature and severity than the 2011 assault. But that Milner assaulted V.T. in 2006 was relevant to the jury’s assessment of the evidence and witnesses’ credibility. *See State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010) (stating that relationship evidence is relevant because it may “assist the jury in assessing witness credibility”). And while the age of relationship evidence may affect its probative value,

Milner's prior assault conviction was only five years old and highly relevant to the current charges. *See Barnslater*, 786 N.W.2d 646, 652–53 (holding that district court did not abuse its discretion in admitting ten- and twelve-year-old prior convictions because they were “relevant to understanding the context of [defendant and victim’s] 11-year relationship”).

Milner also maintains that the danger of unfair prejudice in admitting V.T.’s testimony about the 2006 assault was high. He asserts that the evidence “reflected only on his bad character,” was “utterly irrelevant,” and clouded the jury’s decision-making process. Admitting the evidence, he argues, “allowed the jury to infer that because he had assaulted [V.T.] in the past, he also must have committed the charged crimes or, at the very least, deserved punishment because of his prior conduct.”

“When balancing the probative value against the potential prejudice, unfair 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.” *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted). The probative value of the relationship evidence admitted here was not substantially outweighed by the danger of unfair prejudice. The prosecutor asked only six questions about the 2006 assault, to which V.T. responded briefly, and the prosecutor made no mention of the incident in his closing or rebuttal arguments. Additionally, the district court minimized the potential for unfair prejudice by issuing cautionary instructions to the jury. *See Lindsey*, 755 N.W.2d at 757 (stating that cautionary instructions reduced probability of jury giving undue weight to relationship evidence). Milner fails to

demonstrate that the relationship evidence gave the prosecution an unfair advantage or was illegitimately persuasive. For these reasons, we conclude that the district court did not abuse its discretion in finding that the probative value of the prior incident of domestic violence was not substantially outweighed by the danger of unfair prejudice from admitting the evidence.

Even if the district court did err by admitting the relationship evidence, we will reverse only if Milner shows that he was prejudiced by the erroneous admission. *State v. McCurry*, 770 N.W.2d 553, 561 (Minn. App. 2009), (“Erroneous admission of evidence requires reversal of the conviction if there is a reasonable possibility it may have contributed to the conviction.”), *review denied* (Minn. Oct. 28, 2009). As discussed above, the prior domestic-assault incident involving V.T. had minimal impact on the trial. And the state presented substantial evidence of Milner’s guilt at trial: three eyewitnesses testified that Milner broke into the apartment and attacked V.T. Based on this record, we have no reason to believe that admitting the relationship evidence prejudiced Milner.

## II.

Milner’s second argument is that the district court erred by summarily convicting him of contempt at his sentencing hearing. We review punitive contempt orders for “arbitrariness, capriciousness, and oppressiveness.” *State v. Tatum*, 556 N.W.2d 541, 547 (Minn. 1996). Milner asserts that his conduct does not fit the definition of direct contempt.

Direct contempts are those occurring in the immediate view and presence of the court, and arise from one or more of the following acts: (1) disorderly, contemptuous, or insolent

behavior toward the judge while holding court, tending to interrupt the due course of a trial or other judicial proceedings; (2) a breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the business of the court.

Minn. Stat. § 588.01, subd. 2 (2010). Milner states that because his comments were “neither profane nor contemptuous,” they were “not the kind of seriously disruptive or offensive behavior required for criminal contempt.” For support, he distinguishes his conduct from two cases in which contempt convictions were upheld, stating that his language “was not a verbal attack on the court, did not challenge the court’s authority, and was not rude or offensive.” Milner also relies on *State v. Wylie*, No. A03-1370, 2004 WL 1326749, at \*3 (Minn. App. June 15, 2004), an unpublished case in which we reversed a contempt conviction in part because the defendant’s statements were not profane. And he asserts that his comments were not contemptuous because they were direct responses to the court.

These arguments are unpersuasive. The judiciary has inherent authority to punish direct contempt. *Tatum*, 556 N.W.2d at 547; *see also* Minn. Stat. § 588.02 (2010) (“Every court and judicial officer may punish a contempt by fine or imprisonment, or both.”). And section 588.01 does not require an individual to utter any particular language for a court to convict him of contempt. It was well within the district court’s authority to summarily convict Milner of contempt in this case. His behavior was contemptuous and insolent, and he repeatedly interrupted the hearing. These actions fit well within the definition of direct contempt, so the district court’s order was not arbitrary, capricious or oppressive.

### III.

Milner raises several additional issues in his pro se supplemental and reply briefs. First, he argues that he was improperly charged with felony domestic assault because two of his prior convictions used to enhance the charge were based on “misinformation.” He references his plea deals for those convictions, but these materials do not appear in the record and therefore cannot be reviewed. Milner states that in one prior case he pleaded guilty to fifth-degree assault of a different victim than the one involved in the current case and who was not a family or household member. But fifth-degree assault is a qualified domestic violence-related offense that can enhance a domestic-assault charge regardless of the identity of the victim. *See* Minn. Stat. § 609.02, subd. 16 (2010) (enumerating crimes which qualify as “domestic violence-related offenses,” including domestic assault and all five degrees of assault, including fifth-degree assault); *State v. Moen*, 752 N.W.2d 532, 535 (Minn. App. 2008) (holding that no “domestic-violence nexus” is required under statute defining prior qualified domestic violence-related offenses).

Milner also argues that he could not be charged with both first-degree burglary and felony domestic assault because the two offenses share the “key issue” of assault. He relies on Minn. Stat. § 609.035, subd. 1 (2010), which states, “Except as provided in . . . [section] 609.585 . . . if a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” But Minn. Stat. § 609.585 (2010) provides that “a prosecution for or conviction of the crime of burglary is not a bar to conviction of or punishment for any other crime committed on

entering or while in the building entered.” Accordingly, the prosecution was not precluded from charging Milner with both first-degree burglary and felony domestic assault based on the same conduct. *See State v. Holmes*, 758 N.W.2d 326, 331–32 (Minn. App. 2008) (holding that a conviction of first-degree burglary with assault was not a bar to a conviction for an assault committed during the course of the burglary).

Second, Milner argues that the district court abused its discretion by admitting his “so called confession letter,” which he wrote to V.T. after he was arrested, referencing his arguments with V.T. and the incident in A.G.’s apartment. He asserts that the letter was admissible only if he consented to the police giving it to the prosecution. The case Milner cites in support of this proposition involved an allegedly involuntary confession obtained by police. *See Haynes v. Washington*, 373 U.S. 503, 513, 83 S. Ct. 1336, 1343 (1963). But *Haynes* is inapposite because there is no evidence that police coerced or induced Milner in any way to write the letter. Milner also argues that the district court should have excluded the letter because he formed a constructive trust by sending the letter to V.T. and because V.T. was an agent who violated his Fourth Amendment rights by giving the letter to police. These claims are meritless.

Third, Milner argues that the district court improperly added the phrase “the entry does not have to have been made by force or by breaking in” to his first-degree burglary jury instruction, claiming that this wording was calculated to elicit jurors “into ignoring exculpatory evidence testimonies.” This phrase comes directly from the model jury instruction for first-degree burglary. *See 10A Minnesota Practice*, CRIMJIG 17.04 (2006). And it is consistent with section 609.582, which defines burglary as when a

person “enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building.” There is no requirement in the burglary statute that the entry must be made using force or breaking into the building.

Fourth, Milner argues that he received ineffective assistance of counsel. He asserts that his attorney’s “incompetence” constructively denied him counsel and constituted “constitutional error.” Milner is primarily upset that his attorney did not submit evidence of a burglary at A.G.’s apartment involving a forced entry that allegedly occurred a few days before the incident giving rise to his charges. But Milner does not explain how such evidence is in any way relevant to the burglary charge against him. Rather, his argument reflects his apparent failure to understand that one can commit a burglary without a forced entry and that even if A.G.’s apartment was previously burglarized by another person, such burglary does not insulate him from criminal liability for a burglary a few days later. Without alleging some prejudice or an objective standard that his lawyer’s performance violated, Milner’s claim fails. *See Sanchez-Diaz v. State*, 758 N.W.2d 843, 847–48 (Minn. 2008) (stating that a defendant must show that his attorney’s performance “fell below an objective standard of reasonableness, and that a reasonable probability exists that the outcome would have been different but for counsel’s errors”).

Finally, Milner raises a few arguments without providing any legal support or reason why they warrant relief. He asserts that the prosecutor “condemn[ed]” him in the opening statements, that the district court erred by instructing the jury that it needed to

find that V.T. was a family or household member, that the prosecutor “is not permitted to bring charges of felony domestic assault for political prosecution,” and that his trial was unfair because the district court gave an instruction requiring that the jury find him guilty “beyond a reasonable doubt” rather than providing more instruction on “reasonable doubt.” But Milner does not provide any arguments or authority supporting these claims. Because there is no obvious prejudicial error shown, these arguments are waived. *See State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (“An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection.” (quotation omitted)), *aff’d on other grounds* (Minn. Mar. 8, 2007).

Having reviewed each issue raised in Milner’s pro se supplemental and reply briefs, we are convinced that none warrants relief.

**Affirmed.**