

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0697**

State of Minnesota,
Respondent,

vs.

Steven James Hayes,
Appellant.

**Filed February 25, 2013
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69DU-CR-11-3112

Lori Swanson, Attorney General, Jennifer Coates, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his several convictions stemming from a domestic-abuse incident, arguing that the district court abused its discretion by admitting evidence of

appellant's assaults against a former girlfriend as relationship evidence and by admitting certified copies of the prior assault convictions. We affirm.

DECISION

Relationship evidence

A jury found appellant Steven James Hayes guilty of fifth-degree assault; second-degree assault; domestic assault by strangulation; domestic assault; possession of a firearm by a prohibited person¹; and three counts each of false imprisonment, witness tampering, and terroristic threats. Appellant's convictions stemmed from a domestic-abuse incident in which appellant held his estranged wife, S.B., and S.B.'s friends captive in her apartment and assaulted her and one of her friends. Appellant challenges his convictions, arguing that the district court abused its discretion by admitting evidence of appellant's assaults of a former girlfriend as relationship evidence. This court will not reverse a district court's decision to admit relationship evidence unless the appellant establishes that the district court abused its discretion and that appellant was thereby prejudiced. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008).

In situations involving domestic abuse,

[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

¹ Appellant's record includes: a 2005 carrying-a-weapon-without-a-permit conviction; a 2006 domestic-assault conviction; a 2007 second-degree-assault conviction; a 2011 terroristic-threats conviction; and a 2011 violation-of-a-domestic-abuse-no-contact-order conviction.

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.

Minn. Stat. § 634.20 (2012). “‘Similar conduct’ includes, but is not limited to, evidence of domestic abuse.” *Id.* Domestic abuse is “physical harm, bodily injury, or assault” committed against a family or household member by a family or household member.

Minn. Stat. § 518B.01, subd. 2(a)(1) (2012). A family or household member includes “persons involved in a significant romantic or sexual relationship.” *Id.*, subd. 2(b)(7).

Appellant primarily argues that evidence of his prior assaults against an ex-girlfriend, J.L., was inadmissible because it did not involve the victim of the charged offense. This issue has been resolved. *See State v. Valentine*, 787 N.W.2d 630 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). In *Valentine*, the defendant was charged with domestic assault based on allegations that he punched his girlfriend. *Id.* at 634-35. The state introduced evidence that the defendant committed prior assaults against his other girlfriend. *Id.* at 635. *Valentine* argued that the relationship evidence must be of incidents against the victim or the victim’s family or household members. *Id.* at 636. This court disagreed, holding that Minn. Stat. § 634.20 “unambiguously authoriz[es] the admission of similar-conduct evidence against the accused’s (not the victim’s) family or household members.” *Id.* at 637.

Here, J.L. testified that she had a significant romantic relationship with appellant. J.L. testified that appellant was abusive and confrontational, and she was afraid of him because he was violent. In October 2006, she was in the process of getting a restraining

order against appellant, and she called police after appellant approached her in a parking lot and then followed her in a vehicle when she drove away. As a result of the incident, appellant was convicted of domestic assault. J.L. testified that on July 29, 2007, her babysitter called her because appellant was at her home looking for her. J.L. began walking home and appellant approached her and held her at gunpoint. Appellant put the gun in J.L.'s mouth and threatened to shoot her. Appellant took J.L. into her bedroom, and her babysitter fled and reported the incident. Appellant was convicted of second-degree assault.

Appellant and J.L. had a significant romantic and sexual relationship and appellant committed domestic abuse against J.L. We follow the precedent established by *Valentine*. Because *Valentine* held that section 634.20 permits the introduction of domestic abuse by the accused against former girlfriends, the district court did not abuse its discretion by admitting appellant's conduct toward J.L. *See id.* at 638.

Appellant argues that even if this was permissible relationship evidence it was unfairly prejudicial. Relationship evidence should be excluded for unfair prejudice only if the probative value of the evidence is "substantially outweighed by the danger of unfair prejudice" to the defendant. Minn. Stat. § 634.20. Unfair prejudice "is not merely damaging evidence" but 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). Appellant asserts that because the prior assaults involved J.L. rather than S.B., this must be taken into consideration when weighing the probative value of the evidence.

But the plain language of the statute makes no distinction in weighing the evidence differently when the victims are different.

Appellant also argues that the evidence did not illuminate his relationship with S.B. because S.B. did not know about the prior incidents involving J.L. But relationship evidence does not illuminate the relationship between the defendant and the victim because the victim is aware of the other acts; rather, the evidence establishes the habits and routines that characterize the relationship between the defendant and the victim, and between the defendant and his other household members. *See Valentine*, 787 N.W.2d at 637 (stating that “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”).

Appellant also claims that the evidence was “inflammatory” and that the jury may have convicted him based on that evidence, believing that he needed to be punished for those acts. We are not persuaded by appellant’s argument for two reasons. First, prior to J.L. testifying, the district court instructed the jury:

The [s]tate is about to introduce evidence of conduct by [appellant] against [J.L.] in 2006 and 2007. This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between [appellant] and other family or household members in order to assist you in determining whether [appellant] committed those acts with which he is charged in this complaint.

He’s not being tried for and may not be convicted of any behavior other than the charged offenses. You are not to convict [appellant] on the basis of conduct against J.L. . . . To do so might result in unjust double punishment.

This cautionary instruction mitigated any potential danger of unfair prejudice. *See State v. Waino*, 611 N.W.2d 575, 579 (Minn. App. 2000); *see also State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009) (stating presumption that jury follows district court's instructions).

Second, and most importantly, the state's other evidence sufficiently supported the jury's verdicts. On September 20, 2011, officers responded to a residence on a call of a domestic assault with the possible involvement of a weapon. S.B. testified that on September 20, appellant, her estranged husband, called telling her that he discovered that she lied to him about a recent affair and that he was on his way over to her apartment. As soon as he entered her apartment, appellant hit, choked, pushed, punched, and kicked S.B. Appellant hit S.B. with a pistol before he put the pistol in her mouth and threatened to kill her. Appellant called S.B. derogatory names and continued to beat and choke her to a point where she was unable to breathe and blacked-out.

Three of S.B.'s friends were in S.B.'s apartment during the assault. S.O. testified that appellant took all of the phones in the apartment and threatened to kill anyone who tried to do anything. S.O. saw appellant hit S.B. at least six times with the handle of a gun, slap her many times, and grab her by the neck and throw her against a doorframe. S.L.B. testified that appellant hit S.B. with a pistol and pointed it at all of the apartment's occupants and called them names. S.L.B. testified that appellant punched her in the face. The witnesses testified that they were afraid and did not feel that they could attempt to leave the apartment. When officers arrived, S.B. initially reported that nothing happened because appellant was looking directly at her. This evidence supports appellant's convictions; thus, because J.L.'s testimony did not persuade by illegitimate means, the

district court did not abuse its discretion by admitting testimony regarding appellant's prior domestic assaults against J.L.

Certified copies of convictions

Appellant also argues that the district court abused its discretion by admitting certified copies of his prior assault convictions. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. . . . [A]ppellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted).

After J.L. testified regarding appellant's conduct resulting in two assault convictions, the district court admitted certified copies of appellant's convictions. Appellant claims that while the evidence of similar conduct may have been admissible as relationship evidence, the district court should not have admitted certified copies of convictions because that was evidence of *convictions*, not mere *conduct*. But just because the particular conduct resulted in convictions does not make the admission of the certified copies prejudicial. Additionally, a district court must be convinced that the prior conduct occurred before it determines whether the relationship evidence is more prejudicial than probative. *See State v. Hormann*, 805 N.W.2d 883, 890 (Minn. App. 2011) (stating that courts typically apply parts of *Spreigl* analysis to relationship evidence by requiring a district court to find by clear and convincing evidence that defendant committed the prior act and that the probative value of the evidence outweighs any unfair prejudice), *review denied* (Minn. Jan. 17, 2012). Although J.L. testified about the prior

conduct, she had forgotten some of the details because of the passage of time, and she was unaware that appellant had been convicted following the assault in 2006. Thus, the certified copies supported J.L.'s testimony. Finally, section 634.20 does not require that relationship evidence be admitted solely through witness testimony. The district court did not abuse its discretion by admitting the certified copies of appellant's prior convictions.

Affirmed.