STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0411

State of Minnesota,
Respondent,

vs.

Walter Marquetta Humphrey, Jr.,
Appellant.

Filed February 12, 2018
Affirmed
Reilly, Judge

Dakota County District Court
File No. 19HA-CR-16-2447

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

James C. Backstrom, Dakota County Attorney, Ryan C. McCarthy, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

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

REILLY, Judge

Appellant Walter Marquetta Humphrey Jr. challenges his convictions of two counts of first-degree criminal sexual conduct, arguing that the district court erred in allowing the

state to introduce inflammatory relationship evidence under Minn. Stat. § 634.20 (2016). In a pro se supplemental brief, Humphrey argues that the state's witnesses lacked credibility and the evidence was insufficient. Because the district court did not abuse its discretion in admitting the relationship evidence and Humphrey's arguments lack merit, we affirm.

D E C I S I O N

I. The district court did not abuse its discretion when it admitted relationship evidence.

After a jury trial, Humphrey was convicted of first-degree criminal sexual conduct—sexual penetration of a minor when the actor is in a significant relationship with the victim, and first-degree criminal sexual conduct—sexual penetration of a minor when the actor is in a position of authority. Humphrey argues that the district court deprived him of a fair trial by allowing the state to introduce evidence of Humphrey's past violence against the child victim (the child) and her mother. Humphrey contends that the probative value of the relationship evidence was minimal, and it was far outweighed by the "highly prejudicial" nature of the evidence.

This court reviews a district court's decision to admit relationship evidence for an abuse of discretion. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). The district court has the discretion to allow the state to present "[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members," commonly referred to as "relationship evidence." Minn. Stat. § 634.20; *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). "Domestic conduct" includes "domestic

abuse," which is defined as "physical harm, bodily injury, or assault," the "infliction of fear of imminent physical harm," or criminal sexual conduct. Minn. Stat. §§ 634.20, 518B.01, subd. 2. "Family or household members" include "persons who are presently residing together or who have resided together. . . ." *Id.* "[E]vidence of domestic conduct by the accused against family or household members other than the victim may be admitted pursuant to Minn. Stat. § 634.20. . . ." *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015).

Relationship evidence is used to "illuminate the history of the relationship, that is, 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). Relationship evidence is generally admissible, "unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury. . . ." Minn. Stat. § 634.20; *McCoy*, 682 N.W.2d at 159 n.1. "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). Persuasion by illegitimate means includes "leading the jury to improperly conclude that [the defendant] has a propensity to behave criminally and should now be convicted, and punished, for the charged offenses." *State v. Hormann*, 805 N.W.2d 883, 891 (Minn. App. 2011).

Humphrey contests the admission of three portions of the child's statements in her videotaped forensic interview, which was played for the jury. In the first portion, the child stated that she was afraid of Humphrey and he "used to beat on [her] mother a lot," but that

she forgave him and started treating him like her stepdad. Second, the child said that the police would come to her house "mostly when [Humphrey] was drunk or when he hit [her mother]." Third, the child stated that Humphrey physically abused her with a belt when she was little, she was scared of Humphrey, and had "always been scared of him."[1]

The district court did not abuse its discretion in admitting the relationship evidence contained in the child's statements. The statements describing Humphrey's physical abuse fit the definition of admissible evidence under Minn. Stat. § 634.20. Physical abuse is "domestic abuse" under Minn. Stat. § 518B.01, subd. 2, and "domestic conduct" under Minn. Stat. § 634.20. The domestic conduct was against the child and her mother who were "family and household members" in this case.

The statements' probative value was not substantially outweighed by the danger of unfair prejudice. Here, the probative value of the evidence was that it placed the child's relationship with Humphrey into context. Both the child and her mother testified that the child had a good father-daughter type relationship with Humphrey. The child continued to visit Humphrey at his home after he stopped having a romantic relationship with her mother. The child did not immediately report the sexual abuse. Her statements would have helped the jury to understand why the child delayed reporting Humphrey's abuse. Without such evidence the jury may have been puzzled by why the child was so frightened of

[1] Humphrey did not object to the admission of the first and second portions of the child's statements at trial but does so for the first time on appeal. Normally, we review unobjected-to errors under the "plain error" standard. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Because we conclude that it was not error for the district court to admit all three portions, and that any such error was harmless, we apply the less strenuous objected-to error analysis for all three portions of the child's statements.

Humphrey. The evidence clarified the child's delayed reporting, and her fear of Humphrey, based on the prior assaults.

Furthermore, "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). Like in *Valentine*, the relationship evidence here sheds light on how Humphrey, in general, interacts with close family members, and this is probative as to how he may interact with the child.

The relationship evidence surely damaged Humphrey's case. But to be improper, the evidence must have "persuade[d] by illegitimate means, giving one party an unfair advantage." *Bell*, 719 N.W.2d at 641. As the state notes, the prior conduct of physical abuse is dissimilar to the charged conduct of sexual abuse in this case. As a result, a jury could not have used the evidence as impermissible propensity evidence. The evidence consists of a few sentences within over one hour of the child's testimony detailing Humphrey's sexual abuse. The state did not mention the relationship evidence in its closing argument. The evidence served its limited purpose to explain the child's delayed reporting and why she would have been frightened of Humphrey despite their close relationship. In short, the prejudicial nature of the child's statements did not substantially outweigh its probative value.

Humphrey relies on three cases to support his argument that the district court erred; *see McCoy*, 682 N.W.2d at 161; *State v. Barnslater*, 786 N.W.2d 646, 652 (Minn. App. 2010); and *State v. Word*, 755 N.W.2d 776, 784 (Minn. App. 2008). In *McCoy*, the

supreme court held that evidence of similar conduct by the defendant against an alleged victim of domestic abuse may be admitted under Minn. Stat. § 634.20 without being established by clear and convincing evidence pursuant to Minn. R. Evid. 404(b). 682 N.W.2d at 155. In dicta the supreme court noted the unique challenges the prosecution faces in domestic abuse cases because abuse often occurs within the privacy of the home and the abuser often exerts control over victims. *Id*. at 161. In *McCoy*, the relationship evidence provided context for the jury, allowing it to judge the credibility of the victim's uncooperative testimony that she could not remember talking with the police about her allegations of the assault. *Id*. Humphrey argues that this case is not like *McCoy* because the child and her mother cooperated with police and therefore the state did not face a unique prosecutorial challenge requiring relationship evidence. This argument is not convincing, however, because the court in *McCoy* did not require a "unique" prosecutorial challenge as a prerequisite to the admission of relationship evidence. And in any event, the state in this case did face such a challenge here. Like the victim in *McCoy*, the child here was the only witness to the abuse and her credibility was a central issue. 682 N.W.2d at 161. The relationship evidence, if believed, provided context for the delayed reporting, allowing the jury to judge the child's credibility.

In *Word*—a violation-of-an-order-for-protection case—the district court admitted extensive evidence regarding the defendant's and victim's troubled relationship and the defendant's controlling nature, abuse, and violence towards the victim. 755 N.W.2d at 784. This court concluded that the district court did not plainly err by not limiting the victim's "dramatic and prejudicial" testimony because it explained why the victim was

afraid of Word and provided context explaining why the victim lied under oath in a previous prosecution of Word. *Id*. Humphrey contends that *Word* is distinguishable, because the child's claim that Humphrey hit her and her mother does not make sexual abuse more or less probable. We disagree. As already stated, the relationship evidence sheds light on how Humphrey treats family and household members. Further, claims of physical abuse explain why the child would be afraid to immediately report Humphrey. The relationship evidence explains the child's behavior, making her more credible, thereby making it more probable that the abuse occurred.

In *Barnslater*, this court held that the district court did not err in admitting relationship evidence of the defendant's prior domestic assaults against the victim in a pattern-of-harassing-conduct case. 786 N.W.2d at 648-49, 652. This court determined that the evidence was "particularly probative" because the state needed to prove, as an element of the charge, that the defendant had reason to know that his harassing conduct would cause the victim to feel terrorized. *Id*. at 652; *see* Minn. Stat. § 609.749, subd. 5 (2016). Humphrey argues that this case is not like *Barnslater* because the state was not required to prove a pattern of harassment. While this is true, Humphrey's reading of *Barnslater* and Minn. Stat. § 634.20 is too narrow: relationship evidence may be probative when proving sexual abuse, as well as a pattern of harassment, when it sheds light on the history of the relationship by putting the charged crime in context. *McCoy*, 682 N.W.2d at 159. In short, the cases cited by Humphrey do not help his case.

Even if the district court abused its discretion in admitting the evidence, any such error was harmless. To receive a new trial, Humphrey must show that the admission of the

evidence was an abuse of discretion and that its admission was harmful. *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016). An error is harmful if there is a reasonable possibility that the "wrongfully admitted evidence significantly affected the verdict." *Id*. (quotation omitted).

The entire record demonstrates that it was unlikely that the relationship evidence significantly affected the verdict. The child gave detailed testimony about three separate occurrences of Humphrey sexually penetrating her. The child's trial testimony was consistent with her videotaped forensic interview played for the jury. Her testimony was corroborated by her mother, who testified to the change in her demeanor during the time the abuse occurred. Humphrey's prior statements to the child on the telephone and his apology via text message are, at the least, tacit admissions of guilt. Finally, the state did not mention the child's statements about the past physical abuse in its closing argument. If the district court committed error, the error was harmless.

II. Humphrey's pro se supplemental brief

In a pro se supplemental brief Humphrey attempts to discredit the child's mother with extra-record facts and asserts that the child was untruthful. He argues that he could not have assaulted the child under the circumstances of this case.

Appellate courts decline to address a pro se appellant's claims on appeal that are unsupported by legal analysis or citation, and such arguments are deemed forfeited. *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008); *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Here, Humphrey provides no citation to legal authority or the record, and provides no legal analysis. Humphrey forfeited his arguments. Further, Humphrey asserts facts not

in the record. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988).

Nevertheless, Humphrey's arguments can be liberally construed as challenging the sufficiency of the evidence. When reviewing whether the evidence was sufficient in a criminal case, appellate courts are limited to "ascertaining whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004) (quotation omitted). Appellate courts examine the evidence in the light most favorable to the verdict, and will assume "the jury believed the state's witnesses and disbelieved evidence contradicting those witnesses." *State v. Pilot*, 595 N.W.2d 511, 519 (Minn. 1999).

The child's testimony in this case was detailed and consistent. She testified that Humphrey woke her up in the middle of the night on three different occasions and sexually penetrated her in different ways. When the child confronted Humphrey over the telephone about the assaults he never denied sexually assaulting her. Humphrey later sent the child a text message apologizing saying he was sorry for hurting her. A reasonable jury could have credited the child's testimony and, on review, we assume the jury did so. While a conviction may rest on the uncorroborated testimony of a single credible witness, *State v. Hill*, 285 Minn. 518, 518, 172 N.W.2d 406, 407 (1969), corroborative evidence may include testimony from others regarding the victim's demeanor, emotional condition and changes in behavior after a sexual assault. *State v. Wright*, 679 N.W.2d 186, 190 (Minn.

App. 2004), *review denied* (Minn. June 29, 2004). The child's testimony was corroborated by her mother's testimony about the child's noticeable change in demeanor and behavior.

Humphrey's convictions are supported by sufficient evidence.

Affirmed.