**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A24-0105**

State of Minnesota,
Respondent,

vs.

Joe Cecil Sistrunk,
Appellant.

**Filed December 16, 2024**
**Affirmed in part, reversed in part, and remanded**
**Slieter, Judge**

Hennepin County District Court
File No. 27-CR-23-14159

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Slieter, Judge; and Bentley, Judge.

**NONPRECEDENTIAL OPINION**

**SLIETER**, Judge

On direct appeal from judgments of conviction of domestic assault and threats of violence, appellant argues that the district court erred by (1) allowing the state to introduce prejudicial relationship evidence; (2) admitting a prior statement of the victim; and

(3) convicting appellant of threats of violence based on legally inconsistent jury verdicts. Because the district court acted within its discretion by admitting relationship evidence, and because any error resulting from the admission of the prior statement was harmless, we affirm appellant's domestic-assault conviction. But because appellant's threats-of-violence conviction was based on legally inconsistent verdicts, we reverse his threats-of-violence conviction and remand for further proceedings.

## FACTS

Respondent State of Minnesota charged appellant Joe Cecil Sistrunk with felony domestic assault in violation of Minn. Stat. § 609.2242, subd. 4 (2022), and threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (2022). The following facts derive from Sistrunk's jury trial.

On July 5, 2023, J.B. and Sistrunk picked up a takeout supper and returned to J.B.'s home. When they returned, Sistrunk threatened to hit J.B. with a thermos. Sistrunk went to the bathroom, and J.B. called 911 but ended the call before making a report because Sistrunk returned. J.B. was scared, believing that Sistrunk would be mad if he found out that she called the police. Sistrunk learned that J.B. had called the police, contemplated leaving, but decided that the two should go into the bedroom. In the bedroom, they got into bed and Sistrunk told J.B. that he would kill her before police arrived. Officers arrived, found a bread knife between the mattress and boxspring, and arrested Sistrunk.

Over Sistrunk's objection, the state introduced evidence of an order for protection (OFP) that J.B. had previously obtained against Sistrunk for the purpose of demonstrating

the nature and extent of their relationship. J.B. testified that Sistrunk violated the OFP by continuing to contact her.

The district court also allowed the state to present to the jury a redacted version of an audio-recorded statement that J.B. provided to police the morning after the incident, as a prior consistent statement.

The jury found Sistrunk guilty of domestic assault and threats of violence. The jury returned two threats-of-violence guilty verdicts based on separate legal theories: that Sistrunk intended to terrorize J.B. and that he acted in reckless disregard of the risk of causing that result.[1] The district court convicted Sistrunk of domestic assault and threats of violence. The district court sentenced Sistrunk to 33 months' imprisonment for the domestic-assault conviction. No sentence was pronounced for threats of violence.

Sistrunk appeals.

## DECISION

### I. The district court acted within its discretion by allowing the state to introduce relationship evidence.

Evidence of previous crimes or other bad acts by a defendant is generally inadmissible at trial. Minn. R. Evid. 404(b). But, pursuant to Minn. Stat. § 634.20 (2022),

> [e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or

[1] Sistrunk argued intoxication as a defense. The district court and counsel agreed to give the jury two verdict forms because intoxication is a defense to threats of violence based upon a theory of intent to terrorize but not reckless disregard. *See State v. Torres*, 632 N.W.2d 609, 616 (Minn. 2001) (noting that intoxication is only a defense to specific-intent crimes); *see also State v. Bjergum*, 771 N.W.2d 53, 57-58 (Minn. App. 2009) (determining that the jury did not need to receive an intoxication instruction because terroristic threats made with reckless disregard is not a specific-intent crime).

> household members, is admissible unless the probative value 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.

The district court's decision to admit evidence under section 634.20 in a domestic-abuse prosecution is reviewed for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004).

Before trial, the state moved to introduce evidence of similar conduct by Sistrunk as relationship evidence pursuant to Minn. Stat. § 634.20. Specifically, the state wanted to present the facts which led to J.B. obtaining an OFP against Sistrunk as well as the facts regarding his subsequent violation of that OFP. The district court determined that the evidence "shed[s] light on the relationship of the parties, and . . . falls within the definition of domestic conduct[,]" and it did not "find anything unfairly prejudicial" about the evidence.

Evidence of the facts which led to the issuance of a prior OFP as well as evidence that Sistrunk subsequently violated the OFP is probative evidence of the history of his relationship with J.B. *See State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010) (concluding that the district court acted within its discretion by admitting evidence of 12 incidents of domestic violence as relationship evidence pursuant to Minn. Stat. § 634.20); *see also State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (concluding that OFP violations were probative evidence of the history of the relationship). Sistrunk disagrees, claiming that there was no need "to illuminate the parties' relationship or place the charged offenses in any meaningful context," and, therefore, the evidence was not needed. "The need for

section 634.20 evidence is naturally considered as part of the assessment of the probative value versus prejudicial effect of the evidence," but a district court is not required to independently address the state's need for the evidence. *Bell*, 719 N.W.2d at 639-40 (concluding that "the trial court did not err when it admitted [634.20] evidence . . . without first addressing the state's need for the evidence."). Rather, this evidence is admissible as long as the "probative value is [not] substantially outweighed by the danger of unfair prejudice." Minn. Stat. § 634.20. As the district court found, the facts that led to the issuance of the prior OFP and Sistrunk's subsequent violations is probative evidence of the nature of their relationship.

We also agree with the district court that the probative value of the evidence is not outweighed by the risk of unfair prejudice. A cautionary instruction can reduce "the probability of undue weight being given by the jury to the evidence." *State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015) (quotation omitted). The district court gave a limiting instruction before J.B. testified about the OFP violations.

> Members of the jury, you are about to hear evidence of conduct by the defendant on one or more separate occasions. This evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and the witness in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in this case.
>
> This evidence is not to be used to prove the character of the defendant or that the defendant acted in conformity with such character. The defendant is not being tried for, and may not be convicted of, any behavior other than the charged offenses. You are not to convict the defendant on the basis of conduct on a separate occasion.

And the district court gave a similar instruction before the jury deliberated. The district court therefore acted within its discretion by allowing the state to introduce evidence that led to J.B. obtaining an OFP as well as evidence of Sistrunk's OFP violations pursuant to Minn. Stat. § 634.20.

## II. Any error resulting from the presentation to the jury of J.B.'s prior audio-recorded statement to law enforcement was harmless.

Appellate courts review the admission of a hearsay statement pursuant to an exception to the hearsay rule for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). "A defendant claiming error in the district court's reception of evidence has the burden of showing both the error and the prejudice resulting from the error." *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (quotation omitted).

"Hearsay" is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). J.B.'s statement was admitted as a prior-consistent statement pursuant to Minn. R. Evid. 801(d)(1)(B), which provides that:

> A statement is not hearsay if . . . [t]he declarant testifies at the trial . . . and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant's testimony and helpful to the trier of fact in evaluating the declarant's credibility as a witness.

Sistrunk does not challenge whether J.B.'s credibility had been attacked. *See State v. Nunn*, 561 N.W.2d 902, 909 (Minn. 1997) (noting that "before the statement can be admitted, the witness' credibility must have been challenged"). He argues instead that J.B.'s prior recorded statement was not consistent with her testimony at trial.

In her interview with law enforcement, J.B. claimed that Sistrunk monitored her bank account, became upset that she had transferred money, and accused her of cheating on him. J.B. also said that Sistrunk told her that he had previously "made the news" for doing something bad and would "make the news" for doing something bad again, and that he "stood over [her]" while she went to the bathroom.

J.B. did not testify to any of these statements at trial. But we need not determine whether the district court abused its discretion by admitting the prior recorded statement because appellate courts will not reverse if the error in admitting the evidence was harmless. *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024). That is, we "generally will not reverse a verdict even when improper [evidence] is presented to the jury unless there is a 'reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.'" *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019) (citation omitted).

To determine whether an error significantly influenced the jury's decision, we "examine the entire record." *Id.* at 474. We consider: "(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence." *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020). "This analysis is fact-specific, and not all the factors are relevant or persuasive in every case." *Bigbear*, 10 N.W.3d at 54-55.

***Manner Presented***

We consider the manner in which the evidence was presented to determine whether it significantly impacted the jury's verdict. *Smith*, 940 N.W.2d at 505. J.B.'s

audio-recorded statement to law enforcement was played for the jury during an officer's testimony and after J.B. testified, and the officer was only briefly questioned about the statement. Therefore, the audio recording was not given undue prominence at trial. Thus, this factor weighs in favor of concluding that the error was harmless.

***Persuasive Value***

"[W]e also consider whether the inadmissible evidence was highly persuasive." *Bigbear*, 10 N.W.3d at 56-57 (quotation omitted). During the audio recording, J.B. described behavior that made the circumstances of the incident at issue more likely to be believed by the jury. For example, J.B. told law enforcement that Sistrunk monitored her bank account and got angry over certain transactions and that he had previously accused her of cheating. We are not convinced that the evidence had no persuasive value and, thus, this factor weighs in favor of concluding that the error was not harmless.

***Use in Closing Argument***

Appellate courts "also consider whether and how the offering party used the erroneously admitted evidence in closing argument." *Id.* at 59. The state referenced J.B.'s statement to law enforcement once in 17 transcript pages of closing argument. The state did not rely on the statement to make their closing argument but, instead, focused on her trial testimony. This factor, therefore, weighs in favor of concluding that the error was harmless.

***Effectively Countered***

Whether the defendant "effectively countered the evidence[,]" is also a consideration that we must take into account. *Smith*, 940 N.W.2d at 505; *see also Bigbear*,

10 N.W.3d at 59. Because J.B. did not testify to some of the statements she made during the interview with law enforcement, defense counsel was not able to cross-examine her about the statements. *Bigbear*, 10 N.W.3d at 59. This factor, therefore, weighs in favor of concluding that the error was not harmless.

***Evidence of Guilt***

Finally, "[s]trong evidence of guilt undermines the persuasive value of wrongly admitted evidence." *Id.* (quoting *Smith*, 940 N.W.2d at 505). The statements made to law enforcement generally explain why J.B. was afraid of Sistrunk. The state presented other evidence demonstrating what caused J.B. fear, including her testimony that Sistrunk threatened to hit her with a thermos and that he threatened to kill her. The state did not rely on the statements J.B. made to law enforcement during closing but instead focused on her trial testimony.

After balancing the foregoing factors, Sistrunk has not met his burden of proving that there is reasonable probability that admitting J.B.'s prior audio-recorded statement significantly affected the jury's verdict.

## III. Sistrunk's threats-of-violence conviction is based on legally inconsistent verdicts.

"The question of whether verdicts are legally inconsistent is a question of law, which we review de novo." *State v. Leake*, 699 N.W.2d 312, 325 (Minn. 2005). "Verdicts are legally inconsistent when proof of the elements of one offense negates a necessary element of another offense." *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996).

Sistrunk argues, and the state agrees, that the threats-of-violence verdicts are legally inconsistent. The threats-of-violence statute permits liability under two mutually exclusive mental-state theories. A person who "threatens . . . to commit any crime of violence *with purpose* to terrorize another . . . or in a *reckless disregard* of the risk of causing such terror" is guilty of making threats of violence. Minn. Stat. § 609.713, subd. 1 (emphasis added).

The jury found Sistrunk guilty of threats of violence based first upon a theory of reckless disregard and second upon a theory of intent to cause fear. These verdicts are legally inconsistent because one cannot act both recklessly and intentionally at the same time. *Tichich v. State*, 4 N.W.3d 114, 123 (Minn. 2024) ("Because it is impossible to cause another's death with premeditation and intent and, at the same time, through negligent or reckless conduct, we concluded that proof of an element of first-degree premeditated murder negates a necessary element of second-degree manslaughter."). We, therefore, reverse Sistrunk's threats-of-violence conviction and remand for further proceedings on that count. *See State v. Moore*, 458 N.W.2d 90, 96 (Minn. 1990) (remanding for a new trial following legally inconsistent verdicts).

**Affirmed in part, reversed in part, and remanded.**