STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1203

State of Minnesota,
Respondent,

vs.

Kyle Jacob Kocurek,
Appellant.

Filed June 16, 2025
Reversed and remanded
Schmidt, Judge

Dakota County District Court
File No. 19HA-CR-22-3000

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

Kathryn M. Keena, Dakota County Attorney, Todd P. Zettler, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Cochran, Judge; and Schmidt, Judge.

SYLLABUS

A defendant's timely objection that relationship evidence should not be admitted because it fails to satisfy Minnesota Statutes section 634.20 (2024) preserves for appellate review a district court's failure to sua sponte instruct the jury on the appropriate use of the evidence.

OPINION

SCHMIDT, Judge

In this appeal from a conviction of felony domestic assault, appellant Kyle Jacob Kocurek argues that he is entitled to a new trial because the district court did not sua sponte instruct the jury on how to appropriately consider relationship evidence after Kocurek's objection to the admission of the evidence under Minnesota Statutes section 634.20. Because the district court abused its discretion by not sua sponte instructing the jury on the appropriate use of the evidence, and because the error was not harmless, we reverse Kocurek's conviction and remand for a new trial.

FACTS

Law enforcement received a report that Kocurek assaulted K.G., a person whom he had been dating. Respondent State of Minnesota later charged Kocurek with felony domestic assault under Minnesota Statutes section 609.2242, subdivisions 1(1), 4 (2022).

Before trial, the state filed a motion in limine to allow "evidence of [Kocurek's] prior domestic conduct through victim testimony" under Minnesota Statutes section 634.20. Kocurek filed a motion to exclude the relationship evidence. At the beginning of trial, the prosecutor argued that the state sought to admit evidence of "prior domestic conduct under the relationship statute." Kocurek objected. The district court rejected Kocurek's arguments and granted the state's motion to admit the evidence.

At trial, four witnesses testified. The state called K.G. and a responding officer with the Hastings Police Department. Kocurek called his father and a family friend.

K.G. testified that she and Kocurek went to Hastings to visit people they knew at "a homeless camp by [a] trailer park." K.G. testified that as she stood up to leave and began walking to her car, Kocurek came up behind her, tackled her to the ground, hit her, and covered her mouth because she "was probably screaming." K.G. testified that Kocurek's father put himself between Kocurek and K.G. to get Kocurek to stop hitting her. K.G. was able to escape to her car, but she had a flat tire. K.G. testified she could not call for assistance because Kocurek had taken her phone, broken it, and thrown it into a wooded area. K.G. explained that she contacted her mother from a neighboring business who then called the police to report the assault. K.G. later provided a statement to police.

During direct examination, the prosecutor solicited testimony from K.G. about a broader pattern of abuse by Kocurek. K.G. testified that, during the alleged assault, she was worried about what would happen "[b]ecause he is abusive." When the prosecutor asked her to elaborate, K.G. testified: "[H]e would punch me or headbutt me or control me and what I did." K.G. added that their relationship "was unhealthy, super unhealthy. Very controlled—seeming like I couldn't really do anything without him a lot of the time or at all." She explained that she was "scared a lot of times" and noted that "he would hit me" when "he got angry." K.G. testified that the physical violence began "not long after [they] started dating" and occurred frequently enough that she could not recall how many times it had happened.

The responding officer testified that K.G. told him that she and Kocurek were at the homeless encampment and that Kocurek tackled her, put his hand over her mouth, and broke her phone. During his testimony, the jury heard the audio recording of the officer's

conversation with K.G. In the recording, K.G. described the assault in a manner consistent with her trial testimony and described prior instances of domestic abuse. K.G. also told the officer that she had a restraining order against Kocurek.

After the state rested, Kocurek's father testified. Kocurek's father testified that he was living at the homeless camp and talking with Kocurek, K.G., and a friend. The father testified that the friend mentioned another woman, and K.G. "went off," "got a little violent, started screaming at [Kocurek] and took off." The father testified that he never saw Kocurek tackle K.G., did not see Kocurek "touch her," and K.G. walked off yelling and screaming.

When the family friend testified, he described also living at the camp and visiting with Kocurek, Kocurek's father, and K.G. He testified that he mentioned another woman and then K.G. started "screaming and yelling" and then left. He testified that Kocurek followed her and tried to calm her down. The friend denied seeing or hearing Kocurek do anything to threaten K.G.

After both parties rested, the district court and the parties reviewed the proposed jury instructions outside the presence of the jury. Neither party objected to the instructions. The district court then read the instructions to the jury, which did not include an instruction on how the jury should evaluate the relationship evidence.

During the state's closing argument, the prosecutor emphasized the broader relationship history between Kocurek and K.G. The prosecutor argued: "He took her phone, so she couldn't call for help. He chased her through the woods. Let's tie that into the history of the relationship that we know. [K.G.] testified that he was physically abusive.

There were numerous instances of hitting, punching, violence." The prosecutor recounted K.G. testifying that Kocurek was "manipulative, forcing her to stay, and making threats to tear her family apart if she didn't." The prosecutor insisted that Kocurek intended to "instill a fear" in K.G. that "the violence would get worse" if she did not stay. The prosecutor described K.G.'s testimony as showing that Kocurek "became more and more abusive" over the course of their relationship.

During deliberations, the jury asked: "Was there, actually, a restraining order filed by [K.G.], like she stated in the audio?" While discussing a potential response to the jury's question, Kocurek's defense counsel asked the district court to give the jury a cautionary instruction on the use of relationship evidence. The district court declined to give a cautionary instruction and, instead, told the jury: "[Y]ou must rely on the evidence presented in this trial. You are the finders of fact."

The jury found Kocurek guilty and the district court sentenced Kocurek to 33 months in prison.

Kocurek appeals.

ISSUES

I. When a district court fails to instruct the jury on relationship evidence after a party raises a timely objection to the admission of the evidence, is the lack of a jury instruction forfeited for appellate review such that we must conduct a plain-error analysis?

II. Did the district court abuse its discretion by failing to provide the instruction, and if so, was the abuse of discretion harmless?

ANALYSIS

Kocurek argues that the district court's failure to instruct the jury on how to evaluate the relationship evidence was an abuse of discretion that was not harmless, and therefore, he is entitled to a new trial. The state counters that because Kocurek never requested a cautionary jury instruction, he forfeited the issue for appeal and—under a plain-error analysis—his argument fails. We first clarify the appropriate analysis to resolve this issue, and then we address whether Kocurek is entitled to relief.

I. A defendant's timely objection that relationship evidence fails to satisfy section 634.20 preserves for appellate review a district court's failure to sua sponte instruct the jury on the appropriate use of the evidence.

The Minnesota Supreme Court has adopted Minnesota Statutes section 634.20 as a rule of evidence to allow for "the admission of evidence of similar conduct by the accused against the alleged victim of domestic abuse." *State v. McCoy*, 682 N.W.2d 153, 160-61 (Minn. 2004); *see also State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015). A district court may admit "relationship evidence" as follows:

> Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or 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.

Minn. Stat. § 634.20. The supreme court has noted that the use of this evidence is appropriate to demonstrate the "prior conduct between the accused and the alleged victim" and "to illuminate the history of the relationship, that is, to put the crime charged in the context of the relationship between the two." *McCoy*, 682 N.W.2d at 159.

In *State v. Zinski*, the Minnesota Supreme Court announced a new rule for district courts to employ for admitting relationship evidence. 927 N.W.2d 272 (Minn. 2019). The supreme court held:

> For trials held after the release of this opinion, we adopt the following rule: when a district court admits relationship evidence under Minn. Stat. § 634.20, over a defendant's objection that the evidence does not satisfy section 634.20, the court must sua sponte instruct the jurors on the proper use of such evidence, unless the defendant objects to the instruction by the court.

Id. at 278. In adopting this rule, the supreme court noted two important considerations: the doctrine of forfeiture and the strategic interests of defendants. *Id.* at 279. The new rule incentivizes a defendant "to seek a fair and accurate trial the first time around" by requiring a defendant to object to the admission of the relationship evidence before a district court must sua sponte provide a cautionary instruction. *Id.* The rule also protects a defendant's "strategic interests" by offering the defendant an opportunity to object to the instruction should defense seek to minimize attention on the prior conduct. *Id.*

Here, the state moved to admit relationship evidence, Kocurek timely objected, the district court overruled the objection, and the state presented evidence of Kocurek's violent relationship history with K.G. Under *Zinski*, the district court was required to sua sponte instruct the jurors on the proper use of the evidence (unless Kocurek objected to the court's proposed instruction). *Id.* at 278. The district court provided no instruction.

The state argues that Kocurek forfeited appellate review of the issue because he failed to request the instruction or object to the jury instructions that the district court provided. Because Kocurek forfeited the issue, the state contends that we must conduct a

plain-error analysis in reviewing the district court's failure to provide a cautionary instruction. Kocurek counters that, under *Zinski*, his objection to the admission of the relationship evidence preserved the jury-instruction issue for appellate review, and therefore, we should review the issue under the abuse-of-discretion standard.[1] We agree with Kocurek.

In *Zinski*, the Minnesota Supreme Court adopted a new rule with a specific procedure related to cautionary instructions for relationship evidence. 927 N.W.2d at 278-79. The supreme court put the obligation on the district court to sua sponte provide the jury with a cautionary instruction if the court admits section 634.20 evidence over a defendant's objection. *Id.* In doing so, the supreme court considered the doctrine of forfeiture and held that a defendant is required "to object to the admission of relationship evidence under Minn. Stat. § 634.20 before a district court is required to provide a cautionary instruction[.]" *Id.* at 279. Because Kocurek timely objected to the admission of the relationship evidence under Minnesota Statutes section 634.20, the forfeiture doctrine does not apply. *Id.* Instead, the district court was obligated to provide the jury with a cautionary instruction. Because the forfeiture doctrine does not apply, the issue is

[1] The appropriate analysis may have outcome-determinative consequences. If the issue is forfeited, we would conduct a plain-error analysis. *See State v. Scruggs*, 822 N.W.2d 631, 642 (Minn. 2012) (noting plain-error analysis). If the three plain-error prongs are satisfied, we would then consider whether reversal is required to ensure "the fairness, integrity, or public reputation of judicial proceedings." *Id.* (quotation omitted). If, however, the issue is preserved, we would analyze whether the district court abused its discretion and then determine whether any error was harmless. *See State v. Pendleton*, 567 N.W.2d 265, 270 (Minn. 1997) (noting abuse-of-discretion standard of review with harmless-error analysis).

preserved for appellate review. Thus, we review the challenge to the lack of a jury instruction for an abuse of discretion and for harmless error.

At oral argument, the state also raised concerns about "invited error." *See State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012) ("[A] party cannot assert on appeal an error that he invited"). The state argued that a defendant could object to the admission of the evidence and then affirmatively not request a cautionary instruction, thereby inviting the error knowing that a strong appellate issue has been preserved. However, just as we presume district court judges discharge their duties properly, *see Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008), we also presume that—absent proof to the contrary—defense counsel has properly discharged their ethical duties, both to their clients and to the court. Minn. R. Prof. Conduct 1.3 (requiring diligence in representing a client), 3.3 (requiring candor toward the tribunal).

The Minnesota Supreme Court left no flexibility in *Zinski*. Once a defendant objects to the 634.20 evidence, the district "court must sua sponte instruct the jurors on the proper use of such evidence[.]" *Zinski*, 927 N.W.2d at 278. Given that the supreme court put the duty on the district court to sua sponte instruct the jury, a prosecutor should be wary of seeking to admit relationship evidence without ensuring that the district court satisfies its independent obligation under *Zinski*. We, therefore, hold that if a district court admits relationship evidence over a defendant's timely objection, the district court's failure to sua sponte instruct the jury on the appropriate use of the evidence is preserved for appellate review.

Having clarified the appropriate analysis, we now turn to whether the district court abused its discretion and whether any error was harmless.

II. The district court abused its discretion by failing to instruct the jury on relationship evidence and the error was not harmless.

"A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Allwine*, 963 N.W.2d 178, 188 (Minn. 2021). Here, the state moved to admit relationship evidence, and Kocurek objected to the admission of the evidence. Under *Zinski*, once the district court overruled Kocurek's objection and the state introduced the evidence, the district court was obligated to provide the jury with a cautionary instruction on relationship evidence—unless Kocurek objected to the court's proposed instruction. *See* 927 N.W.2d at 278. Because the district court did not do so, it abused its discretion by failing to act in accordance with the law as articulated by the supreme court in *Zinski*. *See Allwine*, 963 N.W.2d at 188.

When a district court abuses its discretion, we do not reverse if the error was harmless. *Pendleton*, 567 N.W.2d at 270. An error in instructing a jury is "not harmless . . . if it cannot be said beyond a reasonable doubt that the error had no significant impact on the verdict." *Id.* The mere probability that the defendant would have been convicted without the error does not suffice to preclude reversal of a conviction and a new trial. *State v. Olson*, 482 N.W.2d 212, 216 (Minn. 1992). After reviewing the record, we cannot say, beyond a reasonable doubt, that the error had no significant impact on the verdict. *Id.*; *Pendleton*, 567 N.W.2d at 270.

First, the witnesses who testified about the incident provided conflicting accounts about whether an assault occurred. K.G. testified about the assault, and the audio of her statement to police was consistent with her trial testimony. In contrast, Kocurek's father and the father's friend denied that Kocurek assaulted her. Given the conflicting evidence, the state's case largely depended on how the jury assessed witness credibility. But in assessing witness credibility, the jury received no guidance on the appropriate use of the relationship evidence that permeated the trial.

Second, the testimony and exhibits introduced by the state relied heavily on relationship evidence. During direct examination, the state elicited testimony from K.G. about her history with Kocurek, including that he would "punch," "headbutt," and hit her "[w]hen he got angry." K.G. described their relationship as "super unhealthy." The state also played the audio of K.G.'s statement to the officer in which she described prior abuse. The relationship evidence was not an isolated piece of evidence during the trial.

Third, the prosecutor emphasized the relationship evidence during closing argument and encouraged the jury to consider it during their deliberations. The prosecutor stated: "Let's tie [this incident] into the history of the relationship that we know. [K.G.] testified that he was physically abusive. There were numerous instances of hitting, punching, violence." The prosecutor also asserted that K.G. "testified that they've been together for a long time. And that over time, he became more and more abusive." Without a cautionary jury instruction about how to evaluate the relationship evidence, the closing argument encouraged the jury to convict Kocurek due to his past abusive behavior rather than focus on the incident at the homeless encampment.

Finally, the jury sent a question to the judge during deliberations inquiring whether there was a restraining order like K.G. had stated in the audio recording. Defense counsel then specifically asked the district court to provide a cautionary instruction on the relationship evidence, which the district court declined to do. The jury's question provides an inference that members may have been considering the relationship evidence for something other than its appropriate purpose—*i.e.*, to put the charged offense in context.

In sum, we cannot conclude "beyond a reasonable doubt" that the district court's failure to instruct the jury on relationship evidence "had no significant impact on the verdict." *Pendleton*, 567 N.W.2d at 270. We must, therefore, reverse Kocurek's conviction and remand for a new trial.

DECISION

When a district court admits relationship evidence over a defendant's timely objection, the objection preserves, for appellate review, the district court's failure to sua sponte instruct the jury on the appropriate use of the evidence. Because Kocurek timely objected to the district court admitting relationship evidence, the district court was obligated to instruct the jury on relationship evidence sua sponte, and its failure to do so was an abuse of discretion. Because the district court's error was not harmless, we reverse Kocurek's conviction and remand for a new trial.

Reversed and remanded.