STATE OF MINNESOTA
IN COURT OF APPEALS
A15-1427

State of Minnesota,
Respondent,

vs.

William Alphonso Warr,
Appellant.

Filed June 5, 2017
Affirmed
Rodenberg, Judge

Dakota County District Court
File No. 19HA-CR-14-244

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

James C. Backstrom, Dakota County Attorney, Heather D. Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Smith, John, Judge.*

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

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

RODENBERG, Judge

Appellant William Alphonso Warr appeals his conviction for second-degree murder, arguing that he was serially prosecuted and that, under Minn. Stat. § 609.035, subd. 1 (2012), his plea of guilty to violating an order for protection prohibits his later prosecution for murder. He makes additional pro se arguments. We affirm.

FACTS

In 2012, a district court issued an order for protection (OFP) prohibiting appellant from contacting S.M. or her children. S.M. then had two children and was pregnant with appellant's daughter. The daughter was born on October 8, 2012. S.M's two sons, one of whom was K.M.P., are not appellant's children.

From approximately June 8, 2013 until June 11, 2013, and while the OFP remained in effect, appellant violated it by visiting S.M.'s home. While there supervising S.M.'s three children, appellant punched K.M.P. in the stomach. Appellant explained that he punched K.M.P. because he wanted the children to stop "playing the way they were playing, and [he] kind of lost [his] cool." Appellant's punch caused internal bleeding and sepsis. K.M.P. suffered for two to three days, and died on June 11, 2013. Appellant admits that the punch he delivered to K.M.P. killed the boy.

After K.M.P. died on June 11, the police went to S.M.'s home, observed appellant there in violation of the OFP, and arrested him. Appellant was charged with felony violation of an OFP and other crimes he committed while fleeing police on June 11. He pleaded guilty to those charges and, on July 17, 2013, was sentenced for a felony OFP

violation. Six months later, in January 2014, a grand jury indicted appellant on eight counts of murder related to the death of K.M.P. Appellant pleaded guilty to one count of second-degree murder, and he was sentenced for that crime.

Appellant later petitioned for postconviction relief, arguing that his conviction for second-degree murder arose from the same behavioral incident as his earlier conviction for violating an OFP and, therefore, amounted to a prohibited serial prosecution. The district court denied appellant's motion, determining that the convictions did not arise from a single behavioral incident.

This appeal followed.

D E C I S I O N

Appellant argues that, because both of his crimes arose from a single behavioral incident, his conviction of second-degree murder is unlawful.

"Whether the offenses were part of a single behavioral incident is a mixed question of law and fact, so we review the district court's findings of fact for clear error and its application of the law to those facts de novo." *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). "Determining whether multiple offenses are part of a single behavioral incident is not a mechanical exercise, but rather requires an examination of all the facts and circumstances." *Id.* (quotation omitted). "The State bears the burden of proving, by a preponderance of the evidence, that a defendant's offenses were not part of a single behavioral incident." *Id.*

Minnesota law prohibits serialized prosecutions, stating:

> [I]f 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 . . . . All the offenses, if prosecuted, shall be included in one prosecution which shall be stated in separate counts.

Minn. Stat. § 609.035, subd. 1. The statute bars multiple sentences for crimes arising from a "single behavioral incident." *State v. Bauer*, 792 N.W.2d 825, 827 (Minn. 2011). The statute also bars a new charge or indictment after an earlier "charge arising from that same behavioral incident" has been resolved. *State v. Sater*, 588 N.W.2d 512, 514 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999).

Courts use two different tests when determining whether two crimes arose from a single behavioral incident. When all crimes at issue contain the same intent element, we consider "(1) whether the offenses occurred at substantially the same time and place, and (2) whether the conduct was motivated by an effort to obtain a single criminal objective." *Bakken*, 883 N.W.2d at 270 (quotations omitted). When the crimes have different intent elements, we consider whether the crimes "(1) occurred at substantially the same time and place and (2) arose from a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." *State v. Fichtner*, 867 N.W.2d 242, 253-54 (Minn. App. 2015), *review denied* (Minn. Sept. 29, 2015).

The parties dispute whether felony violation of an OFP under Minn. Stat. § 518B.01, subd. 14(d) (2012), was, as of June 11, 2013, a general-intent crime or a specific-intent crime.[1] We need not resolve that issue, because either test leads to the same conclusion.

[1] In June 2013, Minnesota law concerning felony-level OFP violations only criminalized "knowingly" violating the OFP. Minn. Stat. § 518B.01, subd. 14(d) ("A person is guilty

When all of the crimes at issue contain an intent element, those crimes arise from a single behavioral incident if, (1) "the offenses occurred at substantially the same time and place," and (2) "the conduct was motivated by an effort to obtain a single criminal objective." *Bakken*, 883 N.W.2d at 270 (quotations omitted). "In assessing whether the crimes were committed with the same criminal objective, we have examined the relationship of the crimes to each other." *Bauer*, 792 N.W.2d at 829. "Broad statements of criminal purpose do not unify separate acts into a single course of conduct." *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). The supreme court has provided two examples that clarify this test. If a person commits murder by arson, he "may not be sentenced both for the murder and for the arson, . . . because [he] is motivated by an effort to obtain a single criminal objective." *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995). However, if a person murders a victim as part of a premeditated plan, "and then, as an afterthought, steals the victim's car immediately after the murder, a single common criminal objective fails to underlie the murder and the theft of the car." *Id.* at 295.

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of a felony . . . if the person knowingly violates this subdivision . . . ."). The Minnesota Supreme Court has noted that the statute only prohibited violating an OFP if "a valid OFP existed, and [the] defendant knew of [the OFP]." *State v. Colvin*, 645 N.W.2d 449, 454 n.1 (Minn. 2002). In 2013, the legislature amended the statute to remove the word "knowingly" from the statute. 2013 Minn. Laws ch. 47, § 1, at 204 (codified as amended at Minn. Stat. § 518B.01, subd. 14(d) (Supp. 2013)). This amendment went into effect on August 1, 2013, and appellant's crimes took place in June 2013, so we apply the 2012 version of the statute in this case. Minn. Stat. § 645.02 (2012) (stating that amendments go into effect on the next August 1 following enactment, unless otherwise specified); *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009) (noting that amendments are not retroactive without clear evidence of retroactive intent).

In his pleas of guilty, which occurred on two different dates, appellant admitted that he violated the OFP in order to have contact with his daughter and S.M., and that he murdered K.M.P. in an impulsive reaction to how K.M.P. was playing. The objective to punish K.M.P. is clearly separate from appellant's objective of having contact with S.M. and his daughter by violating the OFP. There is no unity of objective between the earlier conviction for violating the OFP and the later murder charge.

Because appellant's criminal acts were not committed with a unity of objective, the district court correctly determined that the crimes did not arise from a single behavioral incident applying the intentional-crimes test.

When offenses contain different intent elements, they arise out of a single behavior if they "(1) occurred at substantially the same time and place and (2) arose from a continuing and uninterrupted course of conduct, manifesting an indivisible state of mind or coincident errors of judgment." *Fichtner*, 867 N.W.2d at 253-54.

The district court determined, in the alternative, that appellant's crimes arose from different errors in judgment and that he had different states of mind while committing them, applying the different-intent-elements test. The record again supports the district court's conclusion. Appellant admits that he violated the OFP in order to have contact with his daughter. Conversely, he admits that he punched K.M.P. out of frustration and having "lost [his] cool." The violation of the OFP and the murder of K.M.P. were committed with different motivations *on different days*, and were the result of different errors of judgment.

Appellant argues that his case is similar to the Minnesota Supreme Court case of *State v. Zuehlke*, 320 N.W.2d 79, 80 (Minn. 1982), and that we should therefore conclude

that his crimes arose from a continuing and uninterrupted course of conduct. In *Zuehlke*, a man appealed his convictions of providing beer to minors and violating the open-bottle law after he purchased beer and rode around in a car drinking it with underage persons. *Id.* at 80-81. The supreme court determined that the defendant obtained the alcohol with the intent to drive around drinking it, so there was unity of conduct. *Id.* at 82. The supreme court stated that, "if the state could have established that defendant bought the beer partly for consumption outside the car and that some of it was consumed outside the car," the supreme court may have concluded the offenses were not part of a unitary course of conduct. *Id.*

The reasoning in *Zuehlke* does not support appellant's argument. In *Zuehlke*, the defendant provided the underage persons with alcohol specifically to drive around and commit the open-bottle violation. *Id.* Here, appellant did not violate the OFP in order to kill or harm K.M.P. In fact, it seems that he continued to violate the OFP after having struck K.M.P. The district court properly and correctly determined that appellant's separate crimes did not arise from a continuing and uninterrupted course of conduct.

Because the crimes of violating an OFP and murdering K.M.P. did not arise from a continuing and uninterrupted course of conduct, we need not analyze whether they occurred at the same time and place.[2]

[2] Although unnecessary to our conclusion, the OFP violation concerned appellant's conduct on June 11. The murder conviction was for his conduct which occurred several days before K.M.P's death.

Appellant also argues, pro se, that the Double Jeopardy Clause of the United States Constitution bars his conviction of second-degree murder after the earlier conviction for violating the OFP. *See* U.S. Const. amend. V (providing Double Jeopardy Clause); *Rew v. Bergstrom*, 845 N.W.2d 764, 795 (Minn. 2014) (noting that the Double Jeopardy Clause protects an individual from multiple punishments for the same crime and from a second prosecution after acquittal or conviction). Minnesota's statutory serial-prosecution protection is broader than the Double Jeopardy Clause. *State v. Johnson*, 273 Minn. 394, 400, 141 N.W.2d 517, 522 (1966) ("[T]he drafters [of section 609.035], as well as the legislature, intended not only to protect against double punishment but also to broaden the protection afforded by our constitutional provisions against double jeopardy."). The later murder prosecution does not, by reason of the earlier OFP-violation conviction, twice place appellant in jeopardy for the same offense. Appellant's pro se arguments have no merit.

Appellant's OFP conviction arose out of a different behavioral incident than his conviction for the murder of K.M.P. Neither Minn. Stat. § 609.035, subd. 1, nor the Double Jeopardy Clause bar his murder conviction.

Affirmed.