STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0026

State of Minnesota,
Respondent,

vs.

Alexis Elview Hancock,
Appellant.

Filed December 4, 2017
Affirmed
Reyes, Judge

Blue Earth County District Court
File No. 07-CR-16-1322

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

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

REYES, Judge

On appeal from her conviction of violation of a domestic abuse no contact order (DANCO), appellant challenges the district court's denial of her motion to stipulate to the

existence of a DANCO and her knowledge thereof as elements of the charged offense in order to preclude presentation of that evidence to the jury during trial. We affirm.

FACTS

On February 23, 2016, the district court issued a DANCO that prohibited appellant Alexis Elview Hancock from having direct or indirect contact with her brother, K.R.H., and his girlfriend, M.K. On March 19, 2016, appellant exited her apartment to meet her sister, T.H. When appellant went outside, K.R.H. was sitting in appellant's truck, which she usually leaves unlocked.

As T.H. pulled into appellant's apartment complex, Mankato Police arrived and arrested T.H. for an unrelated crime. Appellant stood nearby and recorded the incident on her cell phone with K.R.H. standing next to her. A police-squad video of T.H.'s arrest shows appellant and K.R.H. speaking to each other. Shortly after, police discovered the DANCO issued against appellant. On April 5, 2016, the state filed a complaint charging appellant with a misdemeanor violation of a DANCO under Minn. Stat. § 629.75, subd. 2(b) (2014).

The district court held a jury trial on September 30, 2016. In a pretrial motion, appellant asserted that the DANCO should not be admitted, in part, because it contained information prejudicial to appellant. Appellant offered to stipulate that the DANCO existed and that she knew of its existence. The district court denied appellant's request and ruled that the DANCO could be received into evidence. During trial, the jury saw the DANCO via an overhead projector and heard testimony from a Mankato Police Department officer regarding the DANCO's contents, including DANCO excerpts that

were read aloud. The jury found appellant guilty of one count of misdemeanor violation of a DANCO. This appeal follows.

D E C I S I O N

We review the district court's decision to admit objected-to evidence for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Appellant has the burden of establishing that the district court abused its discretion by admitting the evidence and the admission unfairly prejudiced appellant. *Id.* Appellant is prejudiced if "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016).

I. The district court properly permitted the state to present its case-in-chief.

Appellant argues that the district court erred when it denied appellant's offer to stipulate to the existence of the DANCO and her knowledge of its existence. Appellant relies on three cases: *State v. Davidson*, 351 N.W.2d 8 (Minn. 1984); *State v. Berkelman*, 355 N.W.2d 394 (Minn. 1984); and *State v. Kruse*, A07-2389, 2009 WL 817266 (Minn. App. Mar. 31, 2009), *review denied* (Minn. June 16, 2009). In both *Davidson* and *Berkelman*, the supreme court held that the district court erred when it denied the defendants' offers to stipulate to a past conviction because the conviction was one element of the current criminal charge, and the past conviction did not bear in any way upon issues not included in the stipulation. *Davidson*, 351 N.W.2d at 10, 12; *Berkelman*, 355 N.W.2d at 396-97. *Kruse*, an unpublished decision, applied *Davidson* and *Berkelman* to stipulations of the existence and knowledge of a harassment restraining order (HRO). 2009

WL 817266, at *1. Appellant argues that we should apply the *Davidson* and *Berkelman* holdings here because the court applied them in *Kruse*, an HRO case.

Appellant fails to distinguish a DANCO from a past conviction or an HRO. An HRO is a civil order and is issued at the petitioner's request through the civil court process, Minn. Stat. § 609.748 (2014), and a DANCO is "an order issued by a court against a defendant in a criminal proceeding." Minn. Stat. § 629.75, subd. 1(a) (2014). However, the existence of a DANCO is not always evidence of a past conviction:

> [A] domestic abuse no contact order may be issued as a pretrial order before final disposition of the underlying criminal case or as a postconviction probationary order. A domestic abuse no contact order is independent of any condition of pretrial release or probation imposed on the defendant. A domestic abuse no contact order may be issued in addition to a similar restriction imposed as a condition of pretrial release or probation.

Minn. Stat. § 629.75, subd. 1(b) (2014).

In addition, appellant disregards the state's interests in this case. "[T]he prosecution is entitled to prove its case by evidence of its own choice, or, more exactly, that a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the [state] chooses to present it." *Old Chief v. United States*, 519 U.S. 172, 186-87, 117 S. Ct. 644, 653 (1997). The state "may fairly seek to place its evidence before the jurors, as much to tell a story of guiltiness as to support an inference of guilt, to convince the jurors that a guilty verdict would be morally reasonable as much as to point to the discrete elements of the defendant's legal fault." *Id.* at 188, 117 S. Ct. at 654.

A misdemeanor violation of a DANCO occurs when "a person who knows of the existence of a domestic abuse no contact order against the person and violates the order is guilty of a misdemeanor." Minn. Stat. § 629.75, subd. 2(b). Had appellant been permitted to stipulate to the DANCO's existence and her knowledge thereof, the state would have been deprived of its right to present its full case to the jury.

II. The district court did not abuse its discretion when it denied appellant's offer to stipulate to the DANCO because its probative value was not substantially outweighed by its prejudicial effect.

Appellant argues that the district court abused its discretion by admitting the DANCO because its probative value was outweighed by its prejudicial effect. Specifically, she argues that the DANCO's receipt into evidence, publication, and references throughout trial, as well as the jury instructions, had an unfairly prejudicial impact on the outcome of the case. We disagree.

Although the presentation of the DANCO may have been damaging to Hancock's defense, unfair prejudice "is not merely damaging evidence, [or] even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *See State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006) (quotation omitted). Although "'(c)ases may arise where unduly prejudicial evidence, which is without relevance beyond the defendant's judicial admissions, should not be received[,]'" that is not the case here. *See State v. Gustafson*, 266 N.W.2d 878, 880 (Minn. 1978).

As the district court found, the DANCO offers probative evidence of the constraints it imposed. The DANCO contained no unfairly prejudicial details of the incident that led

to its issuance, did not persuade by illegitimate means, and did not give the state an unfair advantage. Because the DANCO's probative value was not outweighed by the danger of unfair prejudice, the district court did not abuse its discretion when it denied appellant's motion to stipulate to the DANCO and permitted its publication at trial.

Appellant's argument that both the references to the DANCO during trial and the jury instructions were unfairly prejudicial also lacks merit. Appellant testified about the DANCO, and any prejudice resulting from the references to the DANCO either during trial or in the jury instructions did not substantially outweigh their probative value. Thus, the district court did not abuse its discretion because the probative value of each substantially outweighs any resulting danger of unfair prejudice.

Affirmed.