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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0080

State of Minnesota,
Respondent

vs.

Maurice Curtis Brown,
Appellant.

Filed December 26, 2017
Affirmed in part, reversed in part, and remanded
Rodenberg, Judge

Ramsey County District Court
File No. 62-CR-16-2756

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Maurice Curtis Brown challenges his convictions for stalking and threats of violence, arguing that the district court plainly erred by admitting irrelevant and

prejudicial evidence of his racial attitudes and his alleged status as a drug dealer, that the district court erred by admitting two incidents of his past behavior as relationship evidence, and that these errors cumulatively deprived him of a fair trial. Appellant further argues for the vacation of one of his sentences because his threats-of-violence conviction arose from the same behavioral incident as his stalking conviction. We affirm in part, reverse in part, and remand.

FACTS

Appellant was charged with stalking by text message in violation of Minn. Stat. § 609.749, subd. 2(4) (2014), stalking with a purpose or intent to injure in violation of Minn. Stat. § 609.749, subd. 2(1) (2014), and threats of violence in violation of Minn. Stat. § 609.713, subd. 1 (Supp. 2015). The incident leading to the charges involved appellant sending the victim a string of 52 text messages in a period of approximately three and a half hours on April 7, 2016. The messages became increasingly confrontational and threatened violence. The victim called law enforcement while she was receiving the messages, and she told police that she believed appellant would carry out his threats and injure her. The stalking charges were enhanced to felonies because appellant had five qualifying domestic-violence-related convictions within the last ten years. Minn. Stat. § 609.749, subd. 4 (2014).

At trial, the state offered and the district court received in evidence the string of text messages between appellant and the victim. The state did not redact from the text-message string statements that reflected appellant's racial attitudes, and an accusation by the victim that appellant was a drug dealer. Appellant did not object or request redaction.

The state also presented relationship evidence at trial, two incidents of which appellant challenges on appeal. First, the district court permitted the state to introduce a 2010 incident in which appellant threatened to "put a bullet" in the victim's head. The district court admitted evidence of the incident as domestic conduct under Minn. Stat. § 634.20 (2014). Next, the district court denied the state's pretrial request to introduce evidence of a 2014 incident in which appellant sent the victim multiple intimidating emails. It determined that evidence of this incident was inadmissible under Minn. Stat. § 634.20. Despite this pretrial ruling, the state asked the victim at trial about this incident. Appellant did not object to this line of questioning, and the district court took no action on its own accord to enforce its earlier pretrial ruling.

A jury found appellant guilty of all three charges. The district court sentenced appellant to 44 months in prison for stalking via text message, and sentenced him to 29 months in prison for threats of violence. The district court entered a conviction for stalking with the purpose or intent to injure but did not sentence appellant on the charge.

This appeal followed.

D E C I S I O N

Appellant first argues that the district court plainly erred by admitting irrelevant and prejudicial evidence of his racial attitudes and his alleged status as a drug dealer when it admitted the unredacted text messages at trial. Second, appellant argues that the district court erred by admitting as relationship evidence his 2010 threat to harm the victim, erred by not enforcing its pretrial prohibition concerning the 2014 incident, and that, taken together, these errors cumulatively undermined his right to a fair trial. Appellant further

argues that, because his threats-of-violence conviction arose from the same behavioral incident as his stalking convictions, his sentence for threats of violence should be vacated.

We first address whether the district court plainly erred by admitting unredacted text messages containing statements regarding appellant's racial attitudes and allegations concerning his background as a drug dealer. At trial, the state offered into evidence, without objection, a long string of text messages between appellant and the victim. The string included statements regarding appellant's racial attitudes and a text from the victim saying that appellant sold drugs and would not stop.

Because appellant did not object, we apply the plain-error standard of review. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "The plain error standard requires that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). "With respect to the substantial-rights requirement, [the defendant] bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016). If all three elements of the plain-error test are met, "we should address the error to ensure fairness and the integrity of the judicial proceedings. . . . We will correct the error only if the fairness, integrity, or public reputation of the judicial proceeding is seriously affected." *State v. Dobbins*, 725 N.W.2d 492, 508 (Minn. 2006) (quotations and citations omitted). Because the district court was not given the opportunity to decide whether the text messages should have been redacted, the issue we address on appeal is whether the district court should have ordered

the state to redact the text messages sua sponte. *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001).

A district court does not err by failing to sua sponte exclude evidence when a defendant's failure to object to the evidence may be part of his trial strategy. *See State v. Washington*, 693 N.W.2d 195, 204-05 (Minn. 2005) (holding that a district court did not err by failing to sua sponte strike testimony which appellant claimed exceeded the scope of admissible *Spreigl* evidence when appellant drew attention to that particular testimony himself). Here, the district court admitted as evidence, within a larger string of text messages, a small number of messages which contained statements reflecting appellant's racial attitudes and one text message in which the victim accused appellant of being a drug dealer. Appellant did not object to the unredacted text messages at trial. When the state asked for clarification regarding appellant's motion in limine to exclude trial testimony from the victim regarding appellant's drug use, and asked whether appellant wanted a text message redaction for the references to illegal drugs in addition to a limitation on the victim's testimony, appellant only requested that the testimony not include references to illegal drug use. He did not ask for redaction. Later, the district court clarified that it would not order the state to redact the text message in which the victim claimed that appellant was a drug dealer because it was a "passing reference" in a "long message[,]" and the district court did not want to draw the jury's attention to it. Appellant did not object to or otherwise follow up on this statement by the district court. Notably, appellant did ask that a portion of a 911 transcript that was introduced at trial be redacted for prejudicial information, but did not ask that the text messages be redacted. From this record, it appears

that appellant deliberately refrained from objecting to the evidence he now challenges on appeal.

Further, the record indicates that appellant himself drew the jury's attention to issues of race, and this appears to have been a part of his defense strategy. Appellant's counsel questioned the victim on cross-examination regarding her use of a racial slur towards appellant (to which the victim responded that "there were racial terms coming from both sides"). In his closing arguments, appellant's counsel again drew the jury's attention to race by stating that the victim had used a racial slur towards the appellant. Defense counsel argued that the parties had large, emotional arguments in which the parties said "unpleasant things" and things they "shouldn't say" to each other. Appellant argued to the jury that, because the parties had these sorts of arguments, it was unreasonable for the victim to feel frightened by appellant's string of text messages. Appellant's decision not to ask that the text messages be redacted for racial comments and the victim's accusation that appellant was a drug dealer seems to have been a tactical one to support his defense narrative at trial that the parties had a toxic relationship and had a history of extreme arguments with one another that almost always blew over.

Because appellant had ample opportunity to ask for redaction of the text messages and because appellant himself drew the jury's attention to issues of race, the district court did not err by failing to sua sponte order the redaction of the text messages. There was no plain error.

We next address the issue of whether the district court improperly admitted as relationship evidence two past incidents of appellant's conduct toward the victim.

Appellant first challenges the district court's admission of evidence regarding an incident that took place in 2010, during which appellant threatened to "put a bullet" through the victim's head, arguing that any potential relevance to whether appellant was guilty of stalking and threatening the victim was greatly outweighed by the potential for unfair prejudice. We review a district court's admission of relationship evidence for an abuse of discretion. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). "A defendant claiming the district court erred in admitting evidence bears the burden of proving the admission was erroneous and prejudicial." *State v. Rhodes*, 627 N.W.2d 74, 84 (Minn. 2001). "[A]n appellant who alleges an error in the admission of evidence that does not implicate a constitutional right must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016).

Relationship evidence is admissible, where relevant, to "show a strained relationship" between the parties. *State v. Bauer*, 598 N.W.2d 352, 365 (Minn. 1999). Minn. Stat. § 634.20 (2016) provides for a subtype of relationship evidence, domestic conduct evidence.

> Evidence of domestic conduct by the accused against the victim of domestic conduct . . . 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. "[E]vidence of prior [domestic] conduct between the accused and the alleged victim" may "put the crime charged in the context of [their] relationship," *State*

v. McCoy, 682 N.W.2d 153, 159 (Minn. 2004), and may bolster its probative value, *State v. Kennedy*, 585 N.W.2d 385, 392 (Minn. 1998).

Before trial, the district court considered and applied Minn. Stat. § 634.20 to determine whether the 2010 incident was admissible. The district court specifically stated that one of the elements the state must prove is that appellant's statements were made with "the intent to terrorize [the victim] or in reckless disregard of causing such terror" and decided to admit the incident as a "face-to-face threat of violence" in order to "put[] into context" why the victim may have been frightened by appellant's threats. The district court admitted the 2010 incident, but also stated it would include a jury instruction explaining to the jury the limits and proper purpose of the evidence.

The district court properly considered and applied Minn. Stat. § 634.20 when deciding whether to admit the 2010 incident as relationship evidence. This evidence provided context as to the relationship between appellant and the victim as it demonstrated the ongoing conflicts between them. In addition, the district court took care to instruct the jury regarding how to properly use relationship evidence. A limiting instruction "lessens the probability of undue weight being given by the jury to [relationship] evidence." *State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014). We presume that a jury follows the district court's instructions. *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). Because the 2010 incident provided context to the relationship between appellant and the victim, and the court properly applied Minn. Stat. § 634.20 when considering whether to admit it as evidence in addition to giving the jury a limiting instruction, the district court acted within its discretion when admitting this piece of relationship evidence.

Appellant also argues the district court erred by failing to sua sponte preclude trial testimony from the victim regarding a 2014 incident which it had deemed inadmissible in a pretrial ruling. The district court determined pretrial that the testimony regarding multiple 2014 intimidating emails would be cumulative and would create confusion for the jury. Despite this, the state asked the victim during trial about the 2014 emails and the victim described the incident. There was no objection, nor did the district court intercede sua sponte. Because appellant failed to object to the testimony at trial, we apply the plain-error test, as set forth above. *Griller*, 583 N.W.2d at 740.

Appellant fails to demonstrate that the plain error, if any there was, affected his substantial rights. Appellant does not assert that it was prosecutorial misconduct for the state to not adhere to a pretrial ruling of the district court. Appellant only argues on appeal that the district court should have enforced its own ruling sua sponte.

In order to satisfy the third element of the plain-error test, appellant "bears the burden of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *Horst*, 880 N.W.2d at 88 (quotations omitted). Here, even if we were to determine that the district court plainly erred by failing to enforce its pretrial ruling to exclude evidence regarding the 2014 incident, appellant fails to show that his substantial rights were affected. The state presented an immense amount of evidence showing the extent of the violent threats appellant made to the victim over the course of 52 text messages, including a threat to cut off her head and leave it on her father's doorstep. Additionally, the jury was presented with evidence that, in 2009, appellant punched the victim in the face while she was

pregnant. This evidence, clearly showing the threats appellant made as well as his ability to carry out those threats, would have been sufficient to convict appellant of the stalking and threats-of-violence offenses without taking the 2014 incident into consideration. The evidence regarding appellant's 2014 emails to the victim were a small piece of a much larger case presented by the state. Moreover, the district court instructed the jury concerning how it should utilize relationship evidence presented during the trial. These instructions would have been applicable to the 2014 incident as well as the other incidents presented as relationship evidence at trial. There is no indication in the record that the 2014 incident had any significant effect on the jury's verdict.[1]

Appellant further argues that the district court's cumulative errors undermined his right to a fair trial. "Cumulative error exists when the cumulative effect of the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant's prejudice by producing a biased jury." *State v. Penkaty*, 708 N.W.2d 185, 200

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[1] Even if we analyzed the potential prosecutorial-misconduct issue arguably occasioned by the state having elicited evidence barred by the district court's pretrial ruling concerning the 2014 emails, we would still conclude that the error, if any, did not affect appellant's substantial rights. We may, in some cases, address issues not raised by the parties where it is necessary to do so to discharge our responsibility as an appellate court. *See State v. Hannuksela*, 452 N.W.2d 668, 673 (Minn. 1990) (addressing issues of "severance" and "partial invalidity" in the context of an evidence-suppression issue, where the parties did not address those issues either in briefing or at oral argument). In context, the state would bear the burden of showing that any prosecutorial misconduct did not affect appellant's substantial rights. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (setting forth a "new approach of shifting the burden to the prosecution to show lack of prejudice in prosecutorial misconduct cases" for policy reasons). In context, and even if we examined the plain-error question with the burden shifted to the state, we would conclude that the state of the record definitively demonstrates the absence of a significant effect on the jury's verdict, regardless of the burden.

(Minn. 2006) (quotation omitted). *At most*, and even if we were to hold that the district court plainly erred by failing to enforce its pretrial ruling sua sponte, that single error, which did not significantly affect the verdict, cannot support appellant's cumulative-error argument.

Finally, appellant argues that one of his sentences should be vacated because his threats of violence and stalking convictions arose out of the same behavioral incident. Minn. Stat. § 609.035 (2014) prevents the imposition of multiple sentences for crimes committed during the same behavioral incident and "contemplates that a defendant will be punished for the most serious of the offenses arising out of a single behavioral incident." *State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006) (quotation omitted). "When conducting a single-behavioral-incident analysis for two intentional crimes, Minnesota courts consider whether the conduct (1) shares a unity of time and place and (2) was motivated by an effort to obtain a single criminal objective." *State v. Bauer*, 776 N.W.2d 462, 478 (Minn. App. 2009) (citing *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000)), *aff'd*, 792 N.W.2d 825 (Minn. 2011).

The conduct underlying both offenses here is appellant's sending of text messages to the victim on April 7. This satisfies the requirement that the conduct must share a unity of time and place.

We next consider whether appellant's conduct was motivated by an effort to "obtain a single criminal objective." *Bauer*, 776 N.W.2d at 478. Stalking under Minn. Stat. § 609.749, subd. 1, is conduct "which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or

intimidated." Threats of violence under Minn. Stat. § 609.713, subd. 1, requires proof of a "purpose to terrorize another." Appellant's behavior satisfies the intent elements of both crimes because it appears to have been guided by a single objective of frightening the victim. Because both requirements of the single-behavioral-incident analysis are satisfied, we reverse the sentences and remand for the district court to determine which of the sentences is for the least serious offense, vacate that sentence, and resentence appellant on the more serious offense. *See State v. Jones*, 848 N.W.2d 528, 538 (Minn. 2014) (reversing and remanding to the district court with instructions to vacate a sentence when appellant was sentenced for two crimes occurring out of the same behavioral incident).

The district court did not err by not sua sponte ordering the redaction of text messages presented as evidence at trial and did not abuse its discretion by admitting as relationship evidence the 2010 incident between appellant and the victim. Further, the admission of evidence at trial that the district court had earlier ruled inadmissible had no significant effect on the jury's verdict. We affirm appellant's convictions. Because appellant's sentences for threats of violence and stalking arose out of the same behavioral incident, we reverse and remand for the district court to vacate the sentence for the less serious offense and resentence appellant only on the more serious offense.

Affirmed in part, reversed in part, and remanded.