STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0110

State of Minnesota,
Respondent,

vs.

Jamari Dishion Cook,
Appellant.

Filed January 22, 2019
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CR-17-7075

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Smith, Tracy M., Judge.

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

ROSS, Judge

In phone calls from jail, Jamari Cook assured his former girlfriend, D.S., "[W]hen I get out, I'm gonna break your f-ckin' face," among similar violent promises. At Cook's

trial for three counts of terroristic threats, the state introduced evidence that Cook had previously assaulted D.S. The jury found Cook guilty on all three counts, and the district court sentenced him for each offense separately. Cook argues on appeal that admitting the evidence of his prior conduct unfairly prejudiced his defense and that he should not have received multiple sentences because his jailhouse threats constituted a single course of conduct. Because the district court acted within its discretion by concluding that any danger of unfair prejudice from Cook's earlier domestic conduct against D.S. did not substantially outweigh the probative value of the evidence, and because Cook's threats constituted multiple behavioral incidents, we affirm.

FACTS

While Jamari Cook was incarcerated in the Hennepin County jail in October 2016, he telephoned D.S., his former girlfriend and the mother of his children, arguing over a particular car about which the two disputed the ownership. Cook urged her not to pursue criminal charges against his friend, who had taken the car without D.S.'s permission, and threatened to "break" her face. Cook called D.S. the next day informing her that she would be "cut" for having sent the police to his friend's house. And Cook called her again the third day, demanding that she not sell the car and warning that he would beat her if she did. We elaborate on the details more below in addressing Cook's arguments on appeal.

The state charged Cook with three counts of terroristic threats, one for each day's discussion. The state notified Cook that it intended to introduce evidence of his prior domestic misconduct toward D.S. This included a 2011 assault, a series of threats that prompted D.S. to seek an order for protection against Cook, and Cook's guilty plea to

violating an order protecting D.S. The district court allowed the state to introduce the evidence over Cook's objection.

The jury found Cook guilty as charged. The district court sentenced him on each offense: 21 months in prison on count one, stayed; 24 months in prison on count two, executed; and 27 months on count three, executed. The district court ordered the three sentences to run concurrently.

Cook appeals.

D E C I S I O N

Cook raises two issues on appeal. He argues first that the district court abused its discretion by admitting evidence of his prior domestic misconduct toward D.S. and second that it erred by sentencing him separately for all three offenses. Neither argument prevails.

I

We first address Cook's argument that the district court should not have admitted evidence of his domestic misconduct toward D.S. The district court has discretion to admit evidence of previous domestic conduct by the accused against his victim. Minn. Stat. § 634.20 (2018). We will reverse only if the district court acted outside the bounds of that discretion and the evidence substantially influenced the jury's decision. *State v. Loving*, 775 N.W.2d 872, 879 (Minn. 2009). Because the district court acted within its discretion, our review ends there.

Cook argues that the relationship evidence was unnecessary because the recorded phone calls during which he made his threatening statements "speak for themselves." A district court may admit evidence of previous domestic conduct unless the probative value

of the evidence is substantially outweighed by the risk of unfair prejudice. Minn. Stat. § 634.20. Cook implicitly argues that, because the threatening nature of his statements is apparent in the telephone recordings, the relationship evidence adds nothing probative. The argument overlooks the state's need to prove that Cook made his statements either intending to terrorize D.S. or recklessly disregarding the risk of terrorizing her. *See* Minn. Stat. § 609.713 (2016). Evidence of Cook's prior domestic misconduct could help the jury understand whether he knew how his words might affect D.S. So although the jailhouse statements do speak for themselves, they tell only part of the story.

Cook argues that even if the state needed the relationship evidence, the evidence unfairly prejudiced him. A district court must weigh the risk that the jury might use evidence improperly against the probative value of the evidence. Minn. Stat. § 634.20. Section 634.20 presumes admission, directing the district court to exclude relationship evidence only if its "probative value is *substantially* outweighed by the danger of unfair prejudice." (Emphasis added.) The relationship evidence tends to imply Cook's intent or recklessness, so its probative value is clear. We recognize that evidence that Cook previously assaulted D.S. in 2011 and threatened her in 2014 would shade him poorly. But the prejudice is neither unfair nor substantial in relation to the probative value of shedding light on whether Cook either intended to terrorize D.S. or recklessly disregarded the risk that his threats would cause her terror. The district court did not abuse its discretion by admitting the evidence.

II

We turn to Cook's argument that the district court erred by sentencing him on all three convictions. The state's sentencing restriction provides, "[I]f a person's conduct constitutes more than one offense . . . , the person may be punished for only one of the offenses. . . ." Minn. Stat. § 609.035, subd. 1 (2018). A defendant therefore may not receive more than one sentence for multiple offenses if those offenses occurred as part of a single behavioral incident. *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). Whether offenses are part of a single behavioral incident is a mixed question of law and fact. *Id.* We review the district court's factual findings for clear error and legal analysis de novo. *Id.* Our review leads us to affirm the sentences.

The state contends that we should not review the sentences because Cook forfeited his right to make the challenge by failing to raise the issue during sentencing. The contention fails. A defendant does not waive his right to challenge the lawfulness of multiple sentences arising from the same behavioral incident by failing to raise the issue at sentencing. *State v. Clark*, 486 N.W.2d 166, 170 (Minn. App. 1992). We will address the merits of Cook's argument.

The district court correctly treated Cook's offenses as constituting different behavioral incidents. Multiple offenses constitute a single behavioral incident when they are united in time, place, and criminal objective. *See State v. Mullen*, 577 N.W.2d 505, 511 (Minn. 1998). But objectives are narrowly construed in this analysis, because "[b]road 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). For example, in *State v. Butterfield*, we

reasoned that "a defendant's desire to satisfy his perverse sexual desires is too broad a motivation to justify application of the single behavioral incident rule." *State v. Butterfield*, 555 N.W.2d 526, 531 (Minn. App. 1996), *review denied* (Minn. Dec. 17, 1996). In that case, we held that a rapist who kidnapped a woman and sexually assaulted her repeatedly had demonstrated "a separate and distinct criminal objective for each assault" as he had "stopped his assaults and moved [the victim] to a new location to serve his own whims." *Id*. Cook's offenses are not part of a single behavioral incident because they are separated by time, occurring on three different days in three separate telephone discussions, and they embody three related but distinct objectives.

Cook's three threat crimes occurred on three different days, were motivated by different triggers, and had different purposes. The threat on the first day, in context, was a warning intended to prevent D.S. from pursuing criminal charges against Cook's friend. He said, "You press charges, [D.S.] I swear, on your dead kids, when I get out, I'm gonna break your f-ckin' face." The threat on the second day was not so much a warning to discourage behavior but an unqualified declaration that D.S. should expect to be attacked for already having made the police report, with Cook saying, "You's a clown, and a motherf-ck gonna cut you for that sh-t too. You sendin' people, the police to people house." Cook's threat on the third day was not motivated to discourage D.S. from pursuing charges against Cook's friend (as occurred on the first day) or to declare that she would be harmed for having previously reported the alleged theft by Cook's friend (as occurred on the second day). This time the threat arose when D.S. indicated that she would sell the car and announced that Cook was in no position to oppose the sale in a civil action, presumably

because he was in jail. To this Cook described his intended punishment for any sale in lieu of a court proceeding: "I can beat the f-ck out of you, though, b-tch." And he foreshadowed the fatal extent of this beating: "Motherf-cker . . . you'll be gone from the kids." In this context, we are satisfied that Cook's offenses on different days, although similar in the mode of their communication, were materially distinct courses of criminal conduct with different triggers and different purposes. For that reason, we hold that the district court did not err by imposing a different sentence for each offense. And although we do not base our decision on it, we add that the threats also arguably involved different promised violence—on one day the threat implied a pummeling, on another the threat implied a stabbing, and on the other the threat implied a murder.

Cook's reliance on *State v. Mullen* and similar cases does not lead us to a different conclusion. In *State v. Mullen*, the supreme court determined that a defendant's engaging in a pattern of harassment by repeatedly telephoning his former girlfriend late one evening and then causing criminal damage to property by smashing her car window shortly after midnight constituted a single behavioral incident. 577 N.W.2d at 507, 511–12. The time of the offense and the objective of engaging in a pattern of harassment are necessarily broader than in a spot crime that is complete in a single incident, like making a terroristic threat. In *Mullen*, the two crimes were indistinguishable. As the supreme court put it, Mullen's "conduct constitute[d] a single behavioral incident because the telephone calls and breaking of the window occurred within a few hours" and shared the same general purpose "to harass" the victim. *Id*. at 511. By contrast, Cook's crimes, which occurred on different days and arose from three different, specific objectives, cannot be so characterized.

State v. Schmidt likewise fails to support Cook's position. In *State v. Schmidt*, the state charged Schmidt with eight counts of stalking or harassing a mother and two minor children by constantly driving by her home, slowing, and staring in their direction, over a long period spanning two years. 612 N.W.2d 871, 874 (Minn. 2000). But again, pattern crimes or crimes that entail repetition of offending behavior arising from the same criminal motive to harass, differ materially from Cook's offenses in that his involved threats with three distinct objectives. Cook also contends that, like the defendant in *Schmidt*, his offenses are indivisible because he was not charged with separate counts for each offense on a specific day. The record contradicts that assertion. The statement of probable cause indicates that Cook's threat on the first day formed the basis for count one, his threat on the second day formed the basis for count two, and his threat on the third day formed the basis for count three. Neither *Mullen* nor *Schmidt* suggests reversal here.

Because Cook's offenses are not unified in time and criminal objective, they did not form a single behavioral incident, and the district court properly sentenced Cook for each separately.

Affirmed.