STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0386

State of Minnesota,
Respondent,

vs.

Maurice Cairo Melancon,
Appellant.

Filed February 19, 2019
Affirmed in part and remanded
Halbrooks, Judge

Hennepin County District Court
File No. 27-CR-17-15629

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Halbrooks, Judge; and Jesson, Judge.

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

HALBROOKS, Judge

Appellant challenges his conviction of first-degree burglary of an occupied dwelling, arguing that (1) the evidence is insufficient to establish that he committed the

crime of stalking while inside the dwelling, (2) the district court abused its discretion by admitting relationship evidence, (3) he received ineffective assistance of counsel, and (4) the district court improperly calculated his criminal-history score. We affirm appellant's conviction and remand to the district court for resentencing following a further development of the sentencing record.

FACTS

In June 2016, appellant Maurice Cairo Melancon and N.J. met through an online dating website and became involved in a romantic relationship. At that time, Melancon was sober and in recovery. In August, he started drinking and using controlled substances again. As a result, N.J. told him she could no longer be involved in a romantic relationship with him. Melancon then returned to his home state of Louisiana. Melancon and N.J. kept in touch while he was in Louisiana and reconnected when he returned to Minnesota in January 2017. But they did not resume their romantic relationship.

When Melancon returned to Minnesota, N.J. allowed him to stay in her home. They initially agreed that he would stay there for a few days and then enter a treatment program. But Melancon did not enter a treatment program, and as a result ended up staying in N.J.'s home for several weeks. In February, N.J. took a trip to Louisiana to visit her former partner. While N.J. was in Louisiana, Melancon used controlled substances in her home and invited other women over. On March 3, N.J. returned and told Melancon that he could no longer stay in her home. In the following weeks, she allowed him to stay in her home "a couple times" because he did not have anywhere else to go and she did not want him to be out in the cold. But on one occasion when she allowed Melancon to stay in her home,

he woke her up by whispering in her ear that she was involved in a conspiracy. Melancon's behavior caused N.J. to fear for her safety, and she asked him to leave. He was not invited into her home after that incident.

Melancon subsequently began showing up at N.J.'s home uninvited and pleading with her to let him in. N.J. testified that he did this almost nightly. On one occasion, Melancon entered the home uninvited by crawling through a window. He left after another individual in the home saw him and yelled at him to leave. Melancon's behavior became increasingly hostile, and N.J. started reporting the incidents to police after Melancon started threatening her. On May 13 and 14, Melancon sent N.J. text messages that seemed to indicate that he was watching her and knew where she was within her home. On May 18, Melancon attempted to contact N.J. using someone else's phone. N.J. called the police. But when they arrived, Melancon was not there.

On May 19, Melancon called N.J. four times within a ten-minute time frame around 2:00 a.m. N.J. called him back once. Melancon answered and referenced the incident from the previous night in which N.J. had called the police. Melancon told her, "Now you know how long it takes for the police to get here." He also said, "Now I'm going to hurt you." N.J. called the police, but they were unable to locate Melancon when they drove by her home. At approximately 3:00 a.m., Melancon pushed in the screen on one of N.J.'s bedroom windows. N.J., who was sleeping in a bed with her two daughters, woke up when the screen fell on them. Based on skills she had learned in self-defense training, N.J. grabbed Melancon's arm, at which time he fled.

The state charged Melancon with first-degree burglary of an occupied dwelling. The complaint was later amended to add a second count of first-degree burglary while committing an assault. Before trial, the state moved to admit evidence of Melancon's prior acts as relationship and *Spreigl* evidence. Over Melancon's objection, the district court ruled that some of the evidence was admissible as relationship evidence. Specifically, N.J. was permitted to testify about Melancon's behavior of showing up at her home uninvited and calling and texting her. The district court also ruled that N.J. could testify that Melancon told her that while he was in Louisiana, he was involved in a volatile relationship with a woman and that at one time they got in an argument and he struck the woman in the face and dislodged her teeth.

The jury found Melancon not guilty of first-degree burglary with an assault, but found him guilty of first-degree burglary of an occupied dwelling. The jury also found Melancon committed the offense of first-degree burglary of an occupied dwelling in the presence of a child, an aggravating factor. The district court sentenced Melancon to 78 months in prison. This appeal follows.

D E C I S I O N

I.

Melancon argues that the district court abused its discretion by admitting unfairly prejudicial relationship evidence. A district court may admit evidence of "domestic conduct" by a defendant unless the probative value of the evidence is "substantially outweighed by the danger of unfair prejudice" to the defendant, "or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. Stat.

§ 634.20 (2016). Such evidence is offered to illuminate the relationship between an accused and an alleged victim and provide context for the alleged incident. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). We review a district court's admission of relationship evidence for abuse of discretion. *State v. Lindsey*, 755 N.W.2d 752, 755 (Minn. App. 2008), *review denied* (Minn. Oct. 29, 2008). To be entitled to relief, an appellant must show that the district court abused its discretion and that he was prejudiced as a result. *Id.*

Prior to trial, the district court determined that certain evidence was admissible as relationship evidence. Specifically, the district court ruled that N.J. could testify that Melancon told her that he got in a physical fight with his ex-girlfriend in Louisiana and dislodged her teeth and that between February and May Melancon would show up to N.J.'s home uninvited and knock on her windows and doors and that he attempted to contact her via phone calls and text messages. The district court determined that this evidence helped place the relationship in context and was "highly probative" of Melancon's intent on the night of the charged incident and "further probative of the underlying allegations of stalking."

Melancon argues that the relationship evidence was unfairly prejudicial because it placed his "supposed criminal character at issue." He argues that N.J.'s testimony about his drug use and altercation with his ex-girlfriend went beyond providing context for his relationship with N.J. and impermissibly focused on his character. But to prove the underlying offense of stalking, the state was required to establish that N.J. "felt frightened, threatened, oppressed, persecuted, or intimidated." Melancon's unpredictable and threatening behavior while using controlled substances was what caused N.J. to start

reporting the incidents to police. Similarly, N.J. testified that her knowledge that Melancon previously struck another domestic partner and dislodged her teeth "inspired a lot of fear" in her. Thus, this evidence provided context for the relationship and helped explain why Melancon's actions on the night of the charged offense caused N.J. to feel frightened.

The state was also required to prove that Melancon "knew or had reason to know" that his actions would cause N.J. to feel frightened. This element was established, in part, by N.J.'s testimony that she asked Melancon to leave her home when he was not sober because it made her fearful and that she had previously called the police to report Melancon's behavior. Melancon was aware that his previous behavior frightened N.J. and that she had called the police on prior occasions when he attempted to contact her or showed up at her house uninvited. Thus, this evidence suggests that on the night of the charged offense Melancon knew, or had reason to know, that similar conduct would cause N.J. to feel frightened.

On this record, the district court did not abuse its discretion in admitting the relationship evidence. The evidence did not unfairly focus on his character, but rather provided the jury with information about Melancon and N.J.'s relationship that helped place the charged event in context.

II.

Melancon argues that the evidence is insufficient to prove that he committed the crime of stalking while inside N.J.'s home. When considering a sufficiency-of-the-evidence argument, we ascertain whether the facts in the record and the legitimate inferences that can be drawn from those facts would permit a jury to reasonably conclude

that the defendant was guilty of the charged offense. *State v. Merrill*, 274 N.W.2d 99, 111 (Minn. 1978). We view the evidence in the light most favorable to the jury's verdict, and assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

Both parties assert that Melancon's conviction is based on both direct and circumstantial evidence and therefore the circumstantial-evidence standard of review applies. We note that N.J. provided direct testimony regarding Melancon's pattern of showing up at her house uninvited, sending her text messages and phone calls that made her feel concerned for her safety, and punching through the screen of her window. This testimony is direct evidence. *See State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (stating that direct evidence is evidence that is based on personal knowledge or observation). But because the evidence is sufficient to sustain Melancon's conviction under the heightened circumstantial-evidence standard, we need not resolve which standard applies.

When a conviction is based on circumstantial evidence, our review involves a two-step process. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved, assuming that the jury resolved any factual disputes in a manner that is consistent with the jury's verdict. *Id.* at 598-99. Second, we independently examine the reasonableness of the inferences the jury could draw from those circumstances. *Id.* at 599. All circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010).

Melancon argues that the evidence is insufficient to prove that he committed the crime of stalking while in N.J.'s home. The jury was instructed that, to find Melancon guilty of first-degree burglary, it must find that Melancon committed the crime of stalking while in the dwelling. Consistent with the statutory definition of stalking, Minn. Stat. § 609.749, subd. 2(2) (2016), the jury was instructed that it must find that Melancon "followed, monitored or pursued N.J." Melancon argues that his "action of putting his arm through the window did not amount to stalking." He argues that because he only put his arm through the window, the evidence is insufficient to prove that he was stalking N.J.

The circumstances proved are as follows. Melancon regularly called N.J. and showed up at her house uninvited. On the night of the charged offense, Melancon called N.J. four times in the middle of the night. When she called him back he referenced how long it would take for the police to respond and then stated, "Now I'm going to hurt you." He later entered her home by punching out a window. Melancon only retreated after N.J. utilized tactics she learned in a self-defense course that she enrolled in out of fear of him. These circumstances are consistent with the jury's determination that Melancon was following, monitoring, or pursuing N.J. when he entered her home on May 19. They are not consistent with any rational hypothesis of innocence. Accordingly, the evidence is sufficient to sustain his conviction of first-degree burglary while committing the crime of stalking.

III.

In a pro se brief, Melancon argues that he received ineffective assistance of counsel. To prevail on his ineffective-assistance-of-counsel claim, Melancon must demonstrate

"(1) that his counsel's representation 'fell below an objective standard of reasonableness'; and (2) 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland v. Washington*, 466 U.S. 668, 688, 694, 104 S. Ct. 2052, 2064, 2068 (1984)).

Melancon makes several general assertions as to why his counsel was ineffective. He argues that his counsel did not allow him to present his "residential evidence" or present a witness list. Melancon also asserts that his counsel was unprepared and unable to fully present a defense. But he does not elaborate as to what a full defense would have been or what information his counsel allegedly overlooked or ignored during the trial. And we do not review matters of trial strategy, including what evidence to present and what witnesses to call. *State v. Nicks*, 831 N.W.2d 493, 516 (Minn. 2013). On this record, we cannot conclude that Melancon's counsel's representation fell below an objective standard of reasonableness. He does not offer any specific examples as to how his representation was not reasonable, and indeed the jury acquitted him of one of the charged counts. Accordingly, Melancon's ineffective-assistance-of-counsel claim fails.

IV.

Melancon argues that the district court erred in determining his criminal-history score. We review the district court's determination of a criminal-history score for an abuse of discretion. *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006). An offender may be assigned criminal-history points for convictions from other jurisdictions if the offense

would have been a felony if committed in Minnesota and the offender received a felony sentence. Minn. Sent. Guidelines 2.B.5(b) (2016).

Melancon argues that the district court abused its discretion in assigning him criminal-history points for two convictions from Louisiana because the state did not establish that the offenses would have been felonies if committed in Minnesota. He asks that the issue be remanded to the district court with instructions that he be sentenced without considering those offenses. The state concedes that the record is insufficient to establish that the prior convictions would be considered felonies in Minnesota, but argues that the case should be remanded to the district court to determine if the convictions should be assigned criminal-history points.

We addressed a similar issue in *State v. Outlaw*. 748 N.W.2d 349 (Minn. App. 2008), *review denied* (Minn. July 15, 2008). In *Outlaw*, the district court assigned the defendant criminal-history points based on five out-of-state convictions for burglary of an automobile. *Id.* at 356. We determined that the record was insufficient to establish that the convictions should be considered felonies because the statutory definition of the crime encompassed behavior that could be considered a misdemeanor under Minnesota law. *Id.* Consequently, we remanded to the district court "to further develop the sentencing record so that the district court can appropriately make its determination." *Id.* Accordingly, we remand to the district court to determine if Melancon's Louisiana convictions are properly included in his criminal-history score.

Affirmed in part and remanded.