STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0817

State of Minnesota,
Respondent,

vs.

Orlando Artes White,
Appellant.

Filed May 13, 2019
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CR-17-25049

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Jesson, Judge.

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

ROSS, Judge

Police found a loaded semiautomatic handgun in a car occupied by Orlando White, whose criminal history made it illegal for him to possess it. The state charged White with

two counts of possession of ammunition or a firearm as an ineligible person, and a jury found him guilty. White appeals, arguing that the district court erred by allowing the prosecutor to cross-examine him on irrelevant, unfairly prejudicial information and by indicating on the warrant of commitment that he was convicted on both counts when conviction on only one is proper. Because the district court did not abuse its discretion by admitting the evidence and because it validly convicted White on both counts, we affirm.

FACTS

In April 2017, a confidential informant told Minneapolis police officer Jeffrey Werner that he had just been inside a car that contained several guns, prescription pills, and crack cocaine. Police stopped the car.

Police removed backseat passenger Orlando White from the car and found a 9mm bullet in his pants pocket. Officers searched the car and found a black duffel bag on the driver's side back seat containing a loaded semiautomatic handgun along with documents and prescription pill bottles bearing White's name. Police arrested White, who has a felony record, and the state charged him with two counts of possession of ammunition or a firearm as an ineligible person.

White testified at his trial. He said he arrived in Minnesota in 2016 and stayed with a female friend for a month. His attorney asked him, "Why did that living situation end?" White answered, "I rather . . . find a new place to try to reside. Me and her was better off as just friends . . . ." The prosecutor cross-examined White, repeating White's stated reason for leaving the woman's home and asking, over White's objection, "Isn't it true that [the woman] got an Order for Protection against you and that's why you couldn't live with her

any longer?" White characterized the order for protection as arising from the woman's supposed desire that he stay with her, not that he stay away from her. The prosecutor followed, "That Order for Protection is because of domestic abuse; is that right?" White admitted that the woman had alleged domestic abuse and that the district court issued the order for protection.

The jury found White guilty on both counts. At sentencing, the district court sentenced White to 60 months in prison and had the following exchange with the prosecutor:

> **Prosecutor**: And did you also find the defendant guilty of Count 2 and merge that with Count 1?
> **Court**: Count 2, the jury found him guilty of.
> **Prosecutor**: Yes.
> **Court**: But I will not sentence on that because it's part of the same behavioral incident —
> **Prosecutor**: Thank you.
> **Court**: —as Count 1.

The warrant of commitment indicates that White was convicted on both counts, that he was sentenced on count one, and that his sentence for count two was "merged" with that sentence.

White appeals.

D E C I S I O N

White argues that the district court improperly allowed the prosecutor to question him about the order for protection. Evidentiary decisions rest within the sound discretion of the district court. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). We will reverse only if White establishes that the district court abused its discretion and that he was

prejudiced by the decision. *See id.* Because the district court did not abuse its discretion, our assessment ends there.

White suggests that evidence of the order for protection was irrelevant. Evidence is relevant if it has a tendency to make the existence of any consequential fact more or less probable. Minn. R. Evid. 401. And parties are allowed to equip the jury with "all evidence [that] might bear on the accuracy and truth of a witness'[s] testimony." *United States v. Abel*, 469 U.S. 45, 52, 105 S. Ct. 465, 469 (1984). Once White represented that the reason he changed residences was so that he and his female friend could remain "just friends," the prosecutor had the right to expose White for offering dishonest testimony. Evidence of the order for protection and the domestic-assault reason for it had the tendency to make White's testimony less credible. The evidence was therefore relevant.

White argues alternatively that, based on the date the order was issued, it could not have been the basis for his moving out and therefore could not have been a basis to impeach his testimony. The argument lacks a factual basis. We will not hold that the district court abused its discretion unless its decision is "against logic and the facts on record." *State v. Vasquez*, 912 N.W.2d 642, 648–49 (Minn. 2018) (quotation omitted). Neither party introduced the order for protection into the record and neither stated on the record its issuance date, saying only that the "order is in effect until 2019." The record therefore cannot support White's contention. In addition to there being no factual record of the order's issuance date, we add that the record also does not indicate that White ever objected on the basis of its issuance date. Given the state of the record, we need not consider the argument further.

White argues also that evidence of the order for protection was unfairly prejudicial. The district court will not exclude relevant evidence on this ground unless its probative value "is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403. White's theory is that the jury might have relied on the evidence to improperly impugn his character. He relies on *State v. Strommen*, 648 N.W.2d 681, 687 (Minn. 2002), but his reliance is misplaced. The *Strommen* court was dealing with neither relevant evidence nor evidence offered to contradict a testifying defendant's statement to the jury, but was addressing irrelevant evidence that was offered to prove motive. *See id*. The prosecutor had the right to counter White's apparently false testimonial evidence about why he stopped living with the woman by confronting him with true evidence about why he stopped living with her. He is correct that the evidence likely prejudiced his case, but this is not the sort of prejudice that is unfair.

White argues finally that the warrant of commitment does not accurately reflect the district court's orally pronounced sentence. He maintains specifically that the district court "erred by entering a disposition for Count 2, and the record must be corrected to reflect only a single disposition on Count 1." The district court orally referred to White's guilt on count one but accurately observed that the jury found him guilty also of count two. The district court indicated that it was sentencing White only as to count one because the two counts were part of the same behavioral incident. The warrant of commitment is consistent with this. It was signed by the sentencing judge, identifies convictions on both counts, and it is conclusive evidence of whether the offense was formally adjudicated. *See Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007).

White argues that we should correct the warrant of commitment because of our recent holding in *State v. Walker*, 913 N.W.2d 463, 466–68 (Minn. App. 2018). Our holding in *Walker* does not apply here. In *Walker*, we held that the district court erred because it *convicted and sentenced* the defendant of both an offense and its lesser-included offense, violating Minnesota Statutes, section 609.04, subdivision 1(4) (2016). *Id.* at 466–67. Unlike lesser-included offenses, multiple separate acts within a single behavioral incident can support multiple convictions so long as multiple sentences are not imposed. *State v. Papadakis*, 643 N.W.2d 349, 357 (Minn. App. 2002). Despite the district court's use of the term "merged," *see Walker*, 913 N.W.2d at 467 (describing use of "merging" as unrecognized by law), the district court did not impose a separate sentence for count two, placing the entire sentence under count one.

Affirmed.