STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1337

State of Minnesota,
Respondent,

vs.

Deshawn Devontae Lamar Wilson,
Appellant.

Filed September 16, 2019
Affirmed
Peterson, Judge[*]

Hennepin County District Court
File No. 27-CR-17-15087

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, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Peterson, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

PETERSON, Judge

In this appeal from convictions of aiding and abetting a drive-by shooting and aiding and abetting second-degree assault, appellant Deshawn Devontae Lamar Wilson argues that (1) the district court abused its discretion by admitting evidence of a threatening text message, and (2) the evidence does not support two of his convictions. Wilson also challenges his sentence, arguing that it exaggerates the criminality of his conduct. We affirm.

FACTS

This appeal arises from convictions stemming from a drive-by shooting that occurred in a Minneapolis neighborhood. The events leading up to the shooting began the day before with an altercation that involved Wilson's brother, D.K.

D.K. is the father of S.S.'s children. The day before the shooting, S.S.—who was pregnant at the time—texted her cousin, R.H., that D.K. was choking her, and she needed R.H. to come to her. R.H. drove to S.S.'s house, along with her kids, her sister, and her sister's wife, where she confronted D.K. and "hit him." D.K. called his sister, N.K., to come fight R.H. But before N.K. arrived, R.H. and S.S. left and returned to R.H.'s home.

Around the time R.H. returned home, N.K. arrived at R.H.'s house to fight. Several people showed up for each "side" of the fight, including Se.S. Ultimately, R.H. fought against N.K., and R.H.'s male cousin, P.S., fought against D.K. Wilson was not present for the fights.

The next day, R.H. received text messages from N.K. that N.K. was going to come back to R.H.'s house so they could fight again. S.S. also received a threatening text message from Wilson, which stated that he was going to "pull up to yo sh-t and take all the babies out first." That evening, R.H. noticed N.K. standing on the corner of her block but tried to ignore her. Later, as R.H. and her family were leaving her home to go to the lake, R.H. heard gunshots.

The gunshots were fired from the corner of R.H.'s block. At that moment, several people—including R.H.'s children—were standing in R.H.'s yard and porch area. R.H.'s cousin and S.S. were in a car parked in front of the house. According to R.H., she froze when she heard the gunshots, and she told P.S. to grab her son. P.S. grabbed the child, and after doing so, was shot in the arm. Bullets from the shooting also struck a neighbor's house, narrowly missing the homeowner and her three friends who were sitting on the porch. In total, nine shots were fired. Immediately following the shooting, P.S.'s girlfriend saw a car speed off through a nearby alley.

When police arrived, R.H. identified Wilson as the shooter. According to R.H., she saw Wilson standing on the corner with a gun. Although she had never met Wilson before, she knew it was him because he looked like his brother and S.S. had shown her Wilson's Facebook picture.[1]

[1] In addition to R.H.'s identification, the investigating officer obtained two descriptions of the shooter: a tall, light-skinned (almost white) male and a short, dark-skinned, black male. Police believed that there were two different guns fired based on the pause between gunshots recorded by police technology.

The state charged Wilson with one count of aiding and abetting a drive-by shooting and eleven counts of aiding and abetting second-degree assault, one count for each alleged victim. Before a jury trial began, the state sought to admit the text message that Wilson sent S.S. on the day of the shooting (in which he stated he was going to "take all the babies out first") as inextricably intertwined with the drive-by shooting. Wilson opposed the admission of the message, but the district court found that the message was linked inextricably both in time and circumstances to the charged offense and allowed its admission.

At trial, the state presented testimony from several of the individuals present during the shooting. R.H. testified to the events, as described above, and identified Wilson in court as the shooter with 100 percent certainty.[2] P.S. testified that he did not see the shooter and that he was shot in the left arm. Another witness who was present, B.B., testified about who was present during the shooting. R.H.'s neighbor testified that she and her friends were on her porch when they heard gunshots, and she described the bullet hole left in her mailbox.

The state presented testimony from an FBI agent who analyzed relevant cell-phone call-detail records. According to the agent, Wilson's phone was near the scene of the shooting approximately 90 minutes before the shooting occurred, but at the time of the

[2] R.H. also acknowledged that she did not identify Wilson in a photo lineup given by police but explained that the picture of Wilson was an old picture.

shooting, there was "zero possibility" that Wilson's phone was at the location of the shooting.[3]

Wilson testified that his mother told him that his brother, D.K., choked S.S., and Wilson was upset about that, but he was not angry about the fight because it did not have anything to do with him. Wilson admitted that he sent the threatening message to S.S., but he explained that he was angry with her based on previous messages and never intended to hurt anyone. Wilson testified that, at the time of the shooting, he was with his friend heading from Brooklyn Park to downtown Minneapolis to find his brother.

The jury found Wilson guilty on all counts and found the presence of several aggravating factors through a special-verdict form. At sentencing, the district court did not sentence Wilson for aiding and abetting a drive-by shooting. Instead, the district court sentenced Wilson to 36 months for each count of the eleven counts of aiding and abetting second-degree assault. Six of those counts were to be served consecutively and five counts were to be served concurrently. Also, with respect to the man who was shot, the district court imposed a 24-month upward departure, for a total sentence of 240 months. Wilson appeals, challenging his convictions and his sentence.

[3] The state also presented testimony from law-enforcement officers that no DNA was found on shell casings recovered from the shooting. Also, although there was testimony that the casings matched a firearm that was recovered from a separate crime, the firearm was not tested for DNA because the way it was stored and handled made it unsuitable for testing.

D E C I S I O N

I. The district court did not abuse its discretion by admitting Wilson's threatening message to S.S.

Wilson argues that the district court abused its discretion by admitting the threatening text message, "Stop making threats . . . we'll pull up to yo sh-t and take all the babies out first," which he sent to S.S. The district court found that the message was "inextricably linked" to the charged offense, based on the circumstances, subject matter, and the domestic-assault incident between D.K. and S.S.

We review a district court's evidentiary decision for an abuse of discretion. *State v. Riddley*, 776 N.W.2d 419, 424 (Minn. 2009). "A defendant appealing the admission of evidence has the burden to show the admission was both erroneous and prejudicial." *Id.*

In general, evidence of other crimes or other bad acts is inadmissible. *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). But "[i]mmediate-episode evidence is a narrow exception to the general character evidence rule." *Riddley*, 776 N.W.2d at 425. "[I]mmediate episode evidence is admissible where two or more offenses are linked together in point of time or circumstances so that one cannot be fully shown without proving the other . . . ." *Id.* (quotation omitted). The supreme court has "repeatedly affirmed the admission of immediate-episode evidence when there is a close causal and temporal connection between the prior bad act and the charged crime." *Id.*

Citing *State v. Fardan*, 773 N.W.2d 303, 316-17 (Minn. 2009), and *Riddley*, 776 N.W.2d at 426-27, Wilson argues that the threatening message was not sufficiently connected to the shooting. In *Fardan*, the supreme court held that, in a murder case, the

district court abused its discretion by admitting evidence of crimes committed after the murder, noting that the murder was concluded before the later crimes occurred, and there was at least an hour between the crimes, resulting in an insufficient connection between the murder and the later crimes. 773 N.W.2d at 316-17. In *Riddley*, the supreme court concluded that, although there was a close temporal connection between a robbery and a murder that occurred 15 minutes later, there was no causal connection between the two crimes and it was an abuse of discretion to admit evidence of the robbery. 776 N.W.2d at 426-27.

Unlike *Fardan* and *Riddley*, the close causal *and* temporal connection between Wilson's message threatening to "take out" the children first and the shooting that occurred two hours later is evident. Wilson's threat was not simply a separate crime that occurred the same day as the charged crime; it was directly related to the shooting and assaults that occurred. The threatening message was sent approximately two hours before the shooting occurred, and the threat escalated into an assault. *See State v. Leecy*, 294 N.W.2d 280, 282 (Minn. 1980) (holding that testimony regarding earlier threats was immediate-episode evidence because the threats escalated into an assault). The district court did not abuse its discretion when it admitted the threatening message as immediate-episode evidence.[4]

[4] Wilson also argues that the message was more prejudicial than probative. But district courts have broad discretion to determine whether evidence is more probative than prejudicial and whether to admit evidence under rule 403. *Doe 136 v. Liebsch*, 872 N.W.2d 875, 882 (Minn. 2015). Because the threatening message was directly linked to the charged crimes, the district court did not abuse its discretion by admitting the message. Wilson also contends that other evidence proved Wilson's motive and identity such that the state did not need to admit the message. But "[t]he state may prove all relevant facts and circumstances which tend to establish any of the elements of the offense with which the

II. Wilson's convictions of aiding and abetting second-degree assault for victims R.S. and Se.S. are supported by sufficient evidence.

Wilson argues that his convictions for aiding and abetting second-degree assault with respect to victims R.S. and Se.S. are not supported by sufficient evidence. He contends that the evidence did not prove that R.S. and Se.S. were near the scene at the time of the shooting.

Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quotation omitted). In cases where direct evidence supports an element of the offense, our review is limited to "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). And we assume that jurors believed the state's witnesses and did not believe contrary evidence. *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004).

Although R.S. and Se.S. did not testify, another victim explicitly testified that R.S. and Se.S. were present when the shooting occurred. An officer also testified that she spoke with R.S. and Se.S. This testimony was sufficient for the jury to conclude that R.S. and Se.S. were present when the shooting occurred. *See id.* (stating that we assume that jurors

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accused is charged, even though such facts and circumstances may prove or tend to prove that the defendant committed other crimes." *State v. Wofford*, 114 N.W.2d 267, 271 (Minn. 1962).

believed the state's witnesses); *see also State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (noting that uncorroborated testimony from a single credible witness can support a conviction). Accordingly, we conclude that sufficient evidence supports Wilson's convictions with respect to R.S. and Se.S.[5]

III. The district court did not abuse its discretion by imposing a 240-month sentence.

Wilson argues that the district court abused its discretion by sentencing him to 240 months in prison, which, he contends, unfairly exaggerates the criminality of his conduct. We will reverse a district court's sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014). "We review a district court's decision to impose consecutive sentences for an abuse of discretion," and we will intervene when a sentence "is disproportionate to the offense or unfairly exaggerates the criminality of the defendant's conduct." *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017) (quotation omitted).

[5] Wilson also contends that the state did not prove that he had the required intent to assault R.S. or Se.S. Assault-fear is a specific-intent crime, which means that the defendant must intend to cause a particular result. *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). But it "does not require a finding of actual harm to the victim." *State v. Hough*, 585 N.W.2d 393, 395 (Minn. 1998). In a similar case where the defendant fired several shots into a home where six people were present, the supreme court stated that "[w]hen an assailant fires numerous shots from a semiautomatic weapon into a home, it may be inferred that the assailant intends to cause fear of immediate bodily harm or death to those within the home," and determined that the defendant's intentional behavior was not excused because he did not know other people besides his intended target were in the home. *Id.* at 397. Similarly here, although Wilson may not have known of every individual who was present at the scene of the shooting, under *Hough*, Wilson is not required to know that each person was present in order to have the requisite intent for assault.

The district court did not sentence Wilson for the drive-by shooting. Instead, it sentenced him to 36 months for each of the eleven counts of second-degree assault. Six of those counts were to be served consecutively and five counts were to be served concurrently. Also, with respect to the man who was shot, the district court added 24 months, for a total sentence of 240 months.

We conclude that the district court's sentence is within its discretion. A district court may impose multiple sentences "if there were multiple victims, as long as the imposition of multiple sentences does not unfairly exaggerate the criminality of the defendant's conduct." *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995).

Citing two supreme court decisions, Wilson argues that his sentence unfairly exaggerates the criminality of his conduct. But those cases do not lead us to conclude that the district court abused its discretion. In *State v. Whittaker*, the supreme court concluded that six consecutive 36-month sentences for second-degree assaults of six victims (in addition to other sentences) did not unfairly exaggerate the criminality of the defendant's conduct because the offenses involved terrorizing the victims in their home using weapons. 568 N.W.2d 440, 453 (Minn. 1997). And in *State v. Ferguson*, the supreme court held that "a single sentence for drive-by shooting at an occupied building is not commensurate with [the defendant's] culpability for using a dangerous weapon to intentionally cause eight persons to fear immediate bodily harm" and reinstated multiple sentences, to be served concurrently. 808 N.W.2d 586, 589-92 (Minn. 2012).

We agree with the district court's observation that "[i]t is really impossible to exaggerate the gravity of this kind of offense where somebody is shooting somewhat

randomly at a large number of people in numerous directions in a residential area." Given Wilson's highly dangerous conduct, which resulted in eleven assaults—including one victim who was shot—the 240-month sentence does not unfairly exaggerate the criminality of his conduct.

Affirmed.