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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1751**

State of Minnesota,
Respondent,

vs.

Ethan James Cook,
Appellant.

**Filed November 25, 2019
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-17-28015

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Hennepin County jury found Ethan James Cook guilty of domestic assault by strangulation based on evidence that he choked his fiancée until she lost consciousness.

We conclude that the district court did not plainly err in its response to a juror who said that she wished to discontinue her jury service in the midst of the jury's deliberations. We also conclude that the district court did not err by admitting evidence concerning the nature of the relationship between Cook and the victim of his crime. Therefore, we affirm.

FACTS

On August 28, 2015, Cook and Y.Q. agreed to get married. They celebrated that evening with relatives and neighbors. After they returned home, Y.Q., who recently had enrolled in a graduate-level professional school, began to work on her coursework. Cook became irritated that Y.Q. did not seem happy or excited about their engagement. He confronted her, took away the engagement ring that he had given her, and grabbed her by the arms and shook her. The incident escalated, and Cook choked Y.Q. until she lost consciousness. After Y.Q. recovered, Cook beat her with a broomstick. Y.Q. sustained several injuries but did not report the incident to police until more than two years later, after she had discontinued her relationship with Cook.

In November 2017, the state charged Cook with one count of making terroristic threats, in violation of Minn. Stat. § 609.713, subd. 1 (2014), and one count of domestic assault by strangulation, in violation of Minn. Stat. § 609.2247, subd. 2 (2014).

The case was tried to a jury over five days in May 2018. On the first day, before trial began, the state filed a motion *in limine* seeking leave to introduce evidence that Cook had assaulted Y.Q. on other occasions. Cook opposed the motion. The district court reserved ruling on the motion. On the morning of the second day of trial, after further

discussion concerning evidentiary issues, the district court ruled that Y.Q.'s testimony concerning other assaultive incidents would be admitted.

During the direct examination of Y.Q., the state elicited testimony about another incident of domestic violence between her and Cook. Specifically, Y.Q. testified that, in August 2016, Cook pushed her down a flight of 15 to 20 stairs, kicked her in the stomach and back, and slapped her. Before Y.Q. testified about that incident, the district court gave the jury a cautionary instruction concerning the limited purpose of that part of Y.Q.'s testimony. Later, outside the presence of the jury, the district court summarized the reasons for its admissibility ruling by stating that the evidence provided context to Cook's and Y.Q.'s relationship and that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.

On the third day of trial, during the defense case, the state voluntarily dismissed the terroristic-threats charge. After the remaining charge was submitted and the jury had deliberated for several hours, the foreperson sent a note to the district court, saying that the jury was deadlocked and unlikely to reach a unanimous decision. The district court instructed the jury to continue deliberating for the remainder of the day, a Friday, and to return after the weekend. On the following Monday morning, the district court asked the jurors whether they could return a fair and impartial verdict. One particular juror responded by saying "I don't wish to continue because my mind is not that good." The district responded as follows:

You don't get to choose whether you can continue or not. I'm just asking if all of you together can consider this matter and give the State and the defendant a fair verdict?

However you may be right now, can you still give the State and the defendant a fair trial? Okay. I'm going to have you continue to deliberate

After the jury left the courtroom, Cook's attorney asked the district court to clarify what the juror had said. The district court responded, "She said she didn't want to continue, and I said she doesn't have a choice whether or not to continue deliberations. All I wanted to know was if she could continue deliberations and be fair and impartial to both, and she indicated she could." Cook's attorney did not object.

Two hours later, the jury returned a verdict of guilty. Cook's attorney polled the jury, and each juror verified the verdict. Cook later filed a motion for a new trial, which the district court denied. The district court imposed a sentence of 15 months of imprisonment but stayed execution of the sentence, placed Cook on probation for three years, and ordered Cook to serve 60 days in jail. Cook appeals.

D E C I S I O N

I. Juror's Ability to Serve

Cook first argues that the district court erred by not appropriately responding to a juror's statement that she did not wish to continue serving as a juror because her "mind is not that good." Specifically, Cook argues that the district court was obligated to declare a mistrial or to seek the parties' consent that the jury could continue deliberations without that juror.

We note at the outset that, in the district court, Cook did not request a mistrial or otherwise object after the juror made the comment to the district court. Because Cook did not object, this court reviews only for plain error. Minn. R. Crim. P. 31.02; *State v. Griller*,

583 N.W.2d 736, 740 (Minn. 1998). Under the plain-error test, we will reverse only if (1) the district court committed an error, (2) the error is plain, and (3) the plain error affected the defendant’s substantial rights. *Id.* “An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). If these three requirements are satisfied, an appellant also must satisfy a fourth requirement, that the error “seriously affects the fairness and integrity of the judicial proceedings.” *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014). If any requirement of the plain-error test is not satisfied, the appellate court need not consider the other requirements. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

Cook’s argument is based on a rule of criminal procedure that provides, “If a juror becomes unable or disqualified to perform a juror’s duties after the jury has retired to consider its verdict, a mistrial must be declared unless the parties agree . . . that the jury consist of a lesser number than that selected for the trial.” Minn. R. Crim. P. 26.02, subd. 9. Another rule of court provides that a juror must be “physically and mentally capable of rendering satisfactory jury service.” Minn. R. Gen. Prac. 808(b)(5). This court applies a clear-error standard of review to a district court’s factual findings concerning a juror’s ability or qualifications and an abuse-of-discretion standard of review to the district court’s ultimate decision to retain or remove a juror. *State v. Berrios*, 788 N.W.2d 135, 140 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

Cook contends that the juror was unable to serve because, as she stated, her “mind is not that good.” Cook’s argument assumes that the juror was unable to serve and that the

district court was therefore obligated to declare a mistrial or to seek the parties' consent that the jury could continue deliberations without that juror. But the record does not conclusively show that the juror was unable to serve. The juror said as much, but the district court was not required to take the juror at her word. Whether the juror was able or unable to serve is somewhat unclear. Our review is hampered by the fact that the district court did not make an express finding of fact as to whether the juror was able or qualified to serve. Our review also is hampered by the fact that the district court did not follow up on the juror's statement by inquiring into the reasons for the juror's statement, which would have yielded additional information from which the district court could have made an express finding concerning the juror's ability to serve. A follow-up inquiry surely is the better practice. Our review is further hampered by the fact that Cook did not make an objection, which would have prompted the district court to be more thorough and more explicit in its response to the juror's statement.

The limited record indicates that the district court did not credit the juror's statement concerning her ability to serve. We interpret the district court's responses to the juror's statement and to Cook's attorney's question to be an implicit finding that the juror was able and qualified. *See State v. Alvarez*, 820 N.W.2d 601, 620 (Minn. App. 2012), *aff'd*, 836 N.W.2d 527 (Minn. 2013). By presiding over the jury-selection process and the evidentiary phase of trial, the district court surely gained some degree of familiarity with the juror. The district court likely was able to observe the juror throughout the trial and likely formed an impression about the juror's abilities and qualifications. The timing of the juror's statement—not at the outset of trial but, rather, after several hours of deliberation—allows

a district court to be skeptical of a juror's statement that he or she cannot serve. It is significant that Cook's attorney later polled the jury, and each juror verified the verdict. In addition, the district court stated, in its ruling on Cook's motion for a new trial, that all jurors nodded in agreement when they were later asked whether they could give the parties a fair trial. Given the circumstances and the limited record, we cannot conclude that the district court plainly erred in its implicit finding that the juror was able and qualified to serve.

Cook contends further that the district court erred by not inquiring into the reasons for the juror's statement. Again, we note that Cook's attorney did not ask the district court to conduct such an inquiry, even after the district court responded to the attorney's question concerning what the juror had said. Cook has not cited any authority for the proposition that a district court plainly errs in this circumstance by not conducting a follow-up inquiry *sua sponte*. In any event, the district court did follow up in one way by asking all jurors whether they could "give the State and the defendant a fair trial."

Thus, the district court did not plainly err by not conducting an inquiry into the reasons for the juror's statement and by not declaring a mistrial or seeking the parties' consent that the jury could continue deliberations without the juror at issue.

II. Claim of Coercive Comment

Cook next argues that the district court erred in its response to the above-mentioned juror on the ground that its comment to the juror may have improperly coerced the entire jury to return a unanimous verdict. Again, Cook did not object in the district court. Thus, we apply the plain-error test. *See* Minn. R. Crim. P. 31.02; *Griller*, 583 N.W.2d at 740.

Cook relies on caselaw in which the supreme court and this court have held that, if a jury is at impasse, a district court may not coerce a jury to return a unanimous verdict. That body of caselaw is based on two principles. First, it is permissible for a trial to end in a hung jury. *State v. Olsen*, 824 N.W.2d 334, 338 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013). Second, “telling a jury that it must reach a verdict may cause jurors holding a minority viewpoint to surrender their honest beliefs in order to reach a unanimous verdict.” *Id.*

In this case, the district court’s response to one juror’s comment did not plainly and obviously coerce the jury to return a unanimous verdict. The district court’s comment was made in response to the juror’s statement about her own ability and qualifications to continue serving as a juror. The district court’s response was directed solely to that juror and was limited to her circumstances. In addition, the district court stated merely that the juror must “continue,” without making any statement about how long the juror must do so or whether the juror must ensure a unanimous verdict. These circumstances are significantly different from the circumstances of the cases on which Cook relies. *See id.* at 339 (concluding that district court coerced jury into unanimous verdict by saying jury must “make a decision on this”); *State v. Peterson*, 530 N.W.2d 843, 846 (Minn. App. 1995) (concluding that district court coerced jury into unanimous verdict by saying jury would be sequestered until reaching unanimous verdict).

Thus, the district court did not plainly err on the ground that its response to the juror who did not wish to continue coerced the entire jury to return a unanimous verdict.

III. Relationship Evidence

Cook last argues that the district court erred by admitting Y.Q.'s testimony concerning another incident of domestic assault by Cook, which was uncharged.

In a prosecution for domestic assault:

Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, 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 (2014); *see also State v. Fraga*, 864 N.W.2d 615, 626-27 (Minn. 2015); *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). Evidence admitted pursuant to section 634.20 is commonly known as “relationship evidence.” *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010). Relationship evidence has probative value if it helps establish the relationship between the victim and defendant or places the alleged conduct in context. *State v. Barnslater*, 786 N.W.2d 646, 652 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010). Relationship evidence may give rise to unfair prejudice if the evidence persuades by illegitimate means and gives the state an unfair advantage. *State v. Bell*, 719 N.W.2d 635, 641 (Minn. 2006). This court applies an abuse-of-discretion standard of review to the admission of relationship evidence pursuant to section 634.20. *McCoy*, 682 N.W.2d at 161.

In this case, the district court admitted the state's relationship evidence on the ground that it would “illuminate” the relationship between Cook and Y.Q. and “put the alleged crime in the context of that relationship.” The district court reasoned that the

probative value of the relationship evidence was not substantially outweighed by the danger of unfair prejudice because the evidence provided “context for judging the complainant’s testimony that might or might not contradict her testimony during the trial.”

Cook contends that the district court erred on the ground that the relationship evidence was unfairly prejudicial. Cook further contends that the other incident occurred “years ago” and that the relationship evidence “lacked credible details.” The relationship evidence likely was detrimental to Cook but not unfairly so in light of the purposes of section 634.20. For example, Y.Q.’s testimony concerning the other incident of domestic assault was relevant to why Y.Q. waited more than two years to report the incident that was the basis of the criminal charge. *See McCoy*, 682 N.W.2d at 159-61 (noting that relationship evidence provides context because domestic violence often occurs in private, “may escalate over time,” and may not be immediately reported). Cook’s contention that the relationship evidence was lacking in details is not based on any legal authority. Nonetheless, Y.Q. provided photographs of the injuries she sustained in the other incident of assault, and the district court considered those photographs before ruling on the admissibility of the relationship evidence. Furthermore, the district court gave the jury a limiting instruction, which tends to reduce the prejudicial effect of the evidence. *See State v. Berry*, 484 N.W.2d 14, 18 (Minn. 1992).

Thus, the district court did not err by admitting the state’s relationship evidence pursuant to section 634.20.

Affirmed.