STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1803

State of Minnesota,
Respondent,

vs.

Ernest Alvin Ranzy,
Appellant.

Filed September 23, 2019
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Hennepin County District Court
File No. 27-CR-18-6236

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Ross, Judge; and Slieter, Judge.

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

REILLY, Judge

In this direct appeal from the judgment of conviction for first-degree assault, appellant argues that (1) the case must be remanded for a *Schwartz* hearing, (2) the district court abused its discretion by imposing an upward departure at sentencing, (3) the district

court erred in entering judgments of conviction for both first- and third-degree assault, and (4) he is entitled to relief on his pro se claims. We reverse and remand with instructions to vacate the conviction for third-degree assault and affirm in all other respects.

FACTS

This appeal arises out of appellant Ernest Alvin Ranzy's convictions for assaulting his girlfriend, the victim. On January 1, 2018, appellant and the victim attended a New Year's party at a friend's apartment. Appellant and the victim got into an argument, during which appellant grabbed the victim, lifted her off the ground, and slammed her down onto the floor. While the victim was on the ground, appellant kicked her over 20 times, struck her with a broom, threw a boombox at her, and cut off her hair with a pair of scissors. The assault continued for about 20 minutes, until the victim's friend persuaded appellant to stop kicking the victim and allow her to go to the hospital. The victim arrived at the hospital with a pneumothorax, a collapsed lung. The injury was so severe that it shifted her heart and other structures, known as a tension pneumothorax. Doctors inserted a chest tube to evacuate the air space and reinflate her lung. The victim also had swelling to the soft tissue of her face, ten rib fractures, and a lacerated liver. The doctor described the victim's injuries as potentially life-threatening.

The state charged appellant with first-degree assault, great bodily harm, in violation of Minn. Stat. § 609.221, subd. 1 (2018), and third-degree assault, substantial bodily harm, in violation of Minn. Stat. § 609.223, subd. 1 (2018). The state gave notice of its intent to seek an aggravated sentence based on the particular cruelty of the assault. At trial, the state presented evidence from the victim, the victim's friend, physicians from the hospital, and

a police investigator. Appellant did not testify. The jury returned a verdict finding appellant guilty of both first- and third-degree assault. The jury also returned special-verdict findings that appellant (1) fractured ten of the victim's ribs, (2) hit her with a boombox, (3) struck her with a broom, (4) continued to strike her when she was on the ground, (5) cut off her hair indicating that it would affect her looks, (6) continued the assault over a protracted period of time, (7) punctured her lung, and (8) lacerated her liver. The district court entered convictions for both counts and sentenced appellant to prison for 225 months, an upward durational departure from the guidelines sentence. Based on the jury's responses to the special-verdict form, the district court found that appellant treated the victim with particular cruelty, justifying an increased sentence. This appeal follows.

D E C I S I O N

I. Appellant Is Not Entitled to Remand for a *Schwartz* Hearing

Appellant argues he is entitled to a *Schwartz* hearing because a witness may have made an inappropriate comment as she was leaving the witness stand following her testimony, and the district court failed to ask the jurors what—if anything—they heard. A defendant may challenge a jury verdict through a *Schwartz* hearing, during which the district court may inquire into whether improper considerations affected the jury's verdict. *Schwartz v. Mpls. Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960). The correct legal standard to apply when a witness testifies improperly is whether "there is a reasonable probability, in light of the entirety of the trial including the mitigating effects of a curative instruction, that the outcome of the trial would have been different had the incident [of alleged misconduct] . . . not occurred." *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016).

The district court is in the best position to evaluate the question of prejudice. *State v. Marchbanks*, 632 N.W.2d 725, 729 (Minn. App. 2001).

Appellant claims that the victim may have made an improper comment under her breath as she left the witness stand. The defense attorney could not hear the victim's comment but the prosecutor, who escorted the victim from the witness stand, stated that it "was mostly just mumblings about how upset she was that she was going through the process." Immediately after the victim left the witness stand the judge turned to the jury and stated, "I could not hear what [the victim] said going by, but disregard anything she said that was not said on the witness stand." Later, as the judge was instructing the jurors before they began deliberating, the judge stated: "You are not to speculate as to possible answers to questions I did not require be answered and you are to disregard all evidence that I have ordered stricken or have told you to disregard."

We determine that appellant is not entitled to remand for a *Schwartz* hearing because there is not a reasonable probability that the outcome of the trial would have been different if the jury had not heard the victim speaking quietly under her breath as she left the witness stand. *See Griffin*, 887 N.W.2d at 262. The state's case against appellant was strong. The victim testified that appellant picked her up, threw her on the ground, and kicked her over 20 times on her chest, stomach, and face. The victim testified that appellant also hit her with a broom, threw a stereo at her arm, and cut off her hair. The victim's friend, who was present during the assault, testified that she feared appellant was going to beat the victim to death, and that the assault lasted about 20 minutes and left the victim "gasping for her last breath." Appellant, the victim, and the victim's friend were the only people in the

apartment. Video surveillance taken from the apartment shows that the victim did not have any injuries when she arrived at the building, but was clearly injured when she left to go to the hospital. The emergency-room physician testified that the victim had life-threatening injuries, including a collapsed lung, fractured ribs, and a lacerated liver. The witnesses were subject to cross-examination by the defense, and the jurors evidently found the state's witnesses credible. Weighing the evidence presented at trial and the credibility of witnesses is for the jury, not the reviewing court. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). Given the weight of the evidence, we conclude that there is no reasonable probability that the victim's brief comments as she left the witness stand affected the outcome of the trial.

Moreover, the district court judge gave a curative instruction immediately after the victim left the stand and again in the final charging instructions to the jury. When a court orders a jury to disregard a witness's comment, we presume that the jury followed that instruction. *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005); *see also State v. Miller*, 573 N.W.2d 661, 675-76 (Minn. 1998) (noting that curative instructions informing jury to disregard testimony lessens prejudicial impact of illicit testimony). The victim's comments were brief, and the court immediately addressed the jury and offered a curative instruction. These curative instructions, coupled with strong evidence of appellant's guilt, support a determination that there is a reasonable probability that the outcome of the trial would not have changed. *Griffin*, 887 N.W.2d at 262. Therefore, appellant is not entitled to remand for a *Schwartz* hearing.

II. The District Court Did Not Abuse its Discretion by Imposing an Upward Durational Departure from the Guidelines Sentence

Appellant argues that the district court abused its discretion by upwardly departing from the presumptive guidelines sentence. The Minnesota Sentencing Guidelines prescribe a range of sentences that is presumed to be appropriate and the sentencing court "must pronounce a sentence within the applicable range unless there exist identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence." *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted); *see also* Minn. Sent. Guidelines 2.D.1. (2018). "Substantial and compelling circumstances are those demonstrating that the defendant's conduct in the offense of conviction was significantly more or less serious than that typically involved in the commission of the crime in question." *State v. Hicks*, 864 N.W.2d 153, 157 (Minn. 2015) (quotation omitted). The district court has broad discretion to depart from the presumptive sentence and we review the district court's decision for an abuse of discretion. *Taylor v. State*, 670 N.W.2d 584, 588 (Minn. 2003).

The sentencing guidelines provide a non-exclusive list of aggravating factors that may justify a departure. Minn. Sent. Guidelines 2.D.3.b (2018). Treating a victim with particular cruelty may be a substantial and compelling reason for departure. *State v. Rourke*, 773 N.W.2d 913, 922-23 (Minn. 2009). The district court "must submit to a jury the question of whether the State has proven beyond a reasonable doubt the existence of additional facts . . . which support reasons for departure." *Id.* at 921. In ordering a departure, the district court must "explain why the circumstances or additional facts found

by the jurors in a *Blakely* trial provide the district court a substantial and compelling reason to impose a sentence outside the range on the grid." *Id*. at 920.

Appellant was convicted of first-degree assault. "Assault" is "the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10(2) (2018). To convict appellant of this offense, the state was required to prove that he intentionally inflicted great bodily harm upon the victim. Minn. Stat. § 609.221, subd. 1 (2018). "Great bodily harm" is bodily injury that causes "a high probability of death" or "a permanent or protracted loss or impairment of the function of any bodily member or organ." Minn. Stat. § 609.02, subd. 8 (2018). The presumptive duration of appellant's first-degree-assault offense is 161 months, with a lower range of 138 months and an upper range of 192 months for a defendant with appellant's criminal-history score. The district court granted an upward durational departure due to the particular cruelty inflicted on the victim and imposed a 225-month prison sentence.

For appellant's conduct to be particularly cruel, it must be "significantly more cruel than conduct typically associated with the offense of conviction." *Dillon v. State*, 781 N.W.2d 588, 600 (Minn. App. 2010), *review denied* (Minn. July 20, 2010). "Particular cruelty involves the gratuitous infliction of pain and cruelty of a kind not usually associated with the commission of the offense in question." *Tucker v. State*, 799 N.W.2d 583, 586 (Minn. 2011) (quotation omitted). The nature and extent of a victim's injuries may indicate that the offender treated her with particular cruelty. *Dillon*, 781 N.W.2d at 600-01.

Appellant argues that his offense was not substantially different from a typical first-degree-assault case. We are not persuaded. The nature and extent of the victim's injuries

reveals that appellant treated the victim with particular cruelty. *See id.* The witness, the victim's friend, testified that the victim was screaming for help during the assault, and the witness feared that appellant was "hitting her too hard." The witness testified that the victim "stopped fighting back" against appellant's attack, while appellant "was still going at her." The witness feared appellant would kill the victim. The emergency-room physician characterized the victim's injuries as potentially life-threatening and testified that the victim had fractured ribs, a lacerated liver, and a punctured lung. The jury returned special-verdict findings that appellant (1) fractured ten of the victim's ribs, (2) hit her with a boombox, (3) struck her with a broom, (4) continued to strike her after she was on the ground, (5) cut off her hair to humiliate her, (6) continued the assault over a protracted period of time, (7) punctured her lung, and (8) lacerated her liver.

Relying on these findings, the district court determined that the departure from the guidelines sentence was justified because appellant "treated this victim with particular cruelty." We agree. Appellant's lengthy assault on the victim, lasting over 20 minutes and inflicted while the victim was on the ground, combined with appellant's act of cutting off the victim's hair with a scissors in an effort to humiliate her, demonstrate that appellant treated the victim with particular cruelty. Appellant's "gratuitous infliction of pain and cruelty" on the victim was beyond the kind "usually associated with the commission of the offense in question." *Tucker*, 799 N.W.2d at 586. Given this record, we determine that the district court did not abuse its discretion by imposing an upward durational departure.

III. The District Court Erred by Entering Convictions on Both Counts

The parties agree that the district court improperly entered judgments of convictions for both first- and third-degree assault. A person "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2018). An "included offense" includes "a crime necessarily proved if the crime charged were proved." *Id*., subd. 1(4). Additionally, "[w]hen the defendant is convicted on more than one charge for the same act the court is to adjudicate formally and impose sentence on one count only." *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (quotation omitted); *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). Whether the district court erred by formally adjudicating multiple convictions is a question of law reviewed de novo. *State v. Ferguson*, 729 N.W.2d 604, 618 (Minn. App. 2007), *review denied* (Minn. June 19, 2007).

The jury found appellant guilty of both first- and third-degree assault. Both convictions are based on appellant's assault of the victim on New Year's Day. However, the district court entered convictions for both offenses at sentencing. The proper procedure "when the defendant is convicted on more than one charge for the same act is for the court to adjudicate formally and impose sentence on one count only," and to leave the remaining count unadjudicated. *LaTourelle*, 343 N.W.2d at 284. Because appellant's third-degree-assault offense is a lesser-included offense to the first-degree-assault offense, the district court erred by entering convictions for both offenses. Accordingly, we reverse and remand to the district court with instructions to vacate the adjudication of guilt with respect to the third-degree assault charge, without disturbing the jury's finding of guilt on that charge.

IV. Appellant Is Not Entitled to Relief on His Pro Se Arguments

Appellant raises eleven additional arguments in his pro se supplemental brief.

First, appellant claims that the criminal complaint failed to state facts upon which a magistrate could find that there was probable cause to believe he committed a crime. A criminal complaint must contain a statement of facts supporting probable cause for each charge, and a judge must determine whether sufficient facts exist to establish probable cause that an offense has been committed and that the defendant committed it. Minn. R. Crim. P. 2.01, subds. 1, 2, 4. When a defendant objects to the sufficiency of the complaint for the first time after conviction and deprives the state of an opportunity to clarify or correct the charge, we will not reverse unless close examination of the entire record reveals that the defect was so substantial that it "misled the defendant as to the nature of the offense charged to the prejudice of his substantial rights." *State v. Pratt*, 152 N.W.2d 510, 512-13 (Minn. 1967). As such, "a conviction after a fair trial . . . will not be invalidated unless the defect or imperfection in the [charging document] is of such a nature that it misled the defendant as to the nature of the offense charged to the prejudice of his substantial rights." *Id*. at 513. Here, the complaint charged appellant with first- and third-degree assault. Appellant did not challenge the sufficiency of the complaint before this appeal, and a close examination of the record does not reveal any defects in the complaint.

Second, appellant argues that his due-process rights were violated because (1) he was not advised of his charges and rights, (2) the court failed to "exercise[] the purpose for record," (3) the court did not hold a *Rasmussen* hearing, (4) the court failed to conduct a finding-of-fact hearing, (5) the court failed to conduct a pretrial hearing, (6) the court failed

to order the completion of discovery, (7) the state failed to advise appellant of his rights, read the complaint out loud in the courtroom, explain the charges against him, or enter into a plea negotiation, and (8) the state failed to properly file the case. Appellant failed to support any of these claims with adequate citation to the record or to relevant caselaw. Generally, "[a]rguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred." *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017). Appellant's due-process arguments are forfeited, and we do not address them.

Third, appellant argues that he was denied his speedy-trial right. The state filed the complaint in March 2018. During a hearing in May 2018, defense counsel requested a speedy trial for June. The district court could not "find a trial date that works for everyone within speedy" because both attorneys had cases scheduled in June and the court had a number of previously-scheduled cases on its trial calendar. The court asked defense counsel if he would agree to extend his speedy trial request by one week, but the defense refused. The district court then found that there was a good-cause reason to extend the trial date by one week because both the court and the defense attorney were not available to hear the case on the proposed June dates.

"Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017). Minnesota courts consider "(1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the delay prejudiced the defendant." *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999). Here,

(1) the one-week delay was minimal, (2) the reason for the delay was based on the court and defense counsel's unavailability in June, (3) appellant asserted his right to a speedy trial, and (4) a one-week delay did not prejudice appellant. While the third factor weighs in appellant's favor, the remaining three factors do not. Appellant's right to a speedy trial was not violated.

Fourth, appellant argues that the district court erred by introducing his defense attorney by a nickname and asks for a new trial because it is "totally inappropriate to use a pseudonym for an attorney representing a defendant." However, the record shows that defense counsel personally introduced himself to the jurors using his nickname. Further, nothing in the record suggests that any of the jurors recognized appellant's counsel or had a personal conflict with defense counsel.

Fifth, appellant argues that his trial counsel was ineffective. Appellant does not support this argument with citations to relevant caselaw or to the record, and we therefore deem this argument forfeited. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (deeming allegations of wrongdoing by trial counsel and district court to be forfeited when unsupported by "argument or citation to legal authority").

Sixth, appellant claims he is entitled to automatic reversal because the court denied his right to represent himself at trial. The Supreme Court identifies denial of an individual's right to self-representation at trial as a structural error. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 149, 126 S. Ct. 2557, 2564 (2006). On the third day of his trial, appellant filed a petition to proceed as pro se counsel. The district court asked appellant if he understood the consequences of his request, the nature of the charges against him, the

maximum sentences he could face, his possible defenses, that he would be responsible for all aspects of presenting his defense, and that he would be held to the same standard as an attorney. Appellant responded that he understood each of these items. The district court accepted appellant's petition to proceed as pro se counsel, dismissed his defense attorney, and instructed the jury that appellant was representing himself. Appellant later cross-examined several witnesses and presented his own closing argument. Appellant's claim that the district court denied his right to self-representation is factually inaccurate.

In his seventh and eighth arguments, appellant challenges the district court's evidentiary decisions to admit portions of video recordings. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Appellant does not explain how the video recordings prejudiced his substantial rights. *Id*. at 203 (requiring appellant to show prejudice). Given appellant's failure to support this argument with relevant facts or citations to the record, we discern no abuse of discretion.

Ninth, appellant argues that the court erred by allowing his ex-wife to testify that he physically abused her in 2015. The state sought to introduce evidence that appellant was convicted of felony terroristic threats against his then-wife in 2015 to demonstrate a pattern of domestic abuse. "[E]vidence of domestic conduct by the accused against family or household members other than the victim may be admitted pursuant to Minn. Stat. § 634.20,[1] which, as a matter of comity, we adopt as a rule of evidence." *State v. Fraga*,

[1] "Evidence of domestic conduct by the accused against the victim of domestic conduct . . . is admissible unless the probative value is substantially outweighed by the danger of

864 N.W.2d 615, 627 (Minn. 2015). We review a district court's ruling on the admission of relationship evidence under section 634.20 for an abuse of discretion. *State v. Andersen*, 900 N.W.2d 438, 441 (Minn. App. 2017). A defendant must show that the evidence was not harmless—that is, that it significantly affected the verdict—before we will reverse. *State v. Benton*, 858 N.W.2d 535, 541 (Minn. 2015). However, if the party raising the issue on appeal failed to preserve an objection by making it to the district court, we review the admission of evidence for plain error. *State v. Word*, 755 N.W.2d 776, 781 (Minn. App. 2008). Here, appellant is not entitled to reversal under either test. Appellant has not argued that admission of his ex-wife's testimony significantly affected the verdict, and the record amply supports the jury's verdict.

Tenth, appellant argues that the court erred by holding a *Blakely* hearing because there was not proper notice and the state failed to cite proper grounds. Appellant waived this argument by raising it for the first time on appeal. *See State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010) (providing that objections to complaint must be made at least three days before omnibus hearing or they are waived); *see also Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (holding that issues not raised in district court, including "constitutional questions of criminal procedure," are generally not considered for the first time on appeal). Appellant's argument also fails on the merits, because the state's complaint clearly contains a *Blakely* notice advising appellant that the state would seek an aggravated sentence.

---

unfair prejudice . . . or by considerations of . . . needless presentation of cumulative evidence." Minn. Stat. § 634.20.

Lastly, appellant argues that the state committed several discovery errors. Appellant did not raise these objections at trial, and a defendant who fails to object at trial generally forfeits his right to object on appeal. *Roby*, 547 N.W.2d at 357. Moreover, arguments that are presented "in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law" are considered forfeited. *Bursch*, 905 N.W.2d at 889. Because appellant failed to cite to applicable law, we consider this argument forfeited.

Affirmed in part, reversed in part, and remanded.