STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0836

State of Minnesota,
Respondent,

vs.

Tiron Patrick Beane,
Appellant.

Filed June 15, 2020
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CR-18-14904

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

FLOREY, Judge

On direct appeal from final judgment, appellant Tiron Patrick Beane argues that his convictions of violating a domestic-abuse-no-contact order (DANCO) and an order for

protection must be reversed because the state did not prove beyond a reasonable doubt that L.L. was the person Beane contacted or that Beane knowingly violated the DANCO. In his pro-se supplemental brief, Beane also asserts that his waiver of counsel was invalid, that the district court erred by failing to appoint advisory counsel, and that the district court erred by permitting the state to introduce hearsay evidence. We affirm.

FACTS

On May 23, 2018, Beane was served with an order for protection (OFP) prohibiting him from having contact, including by phone, with L.L. The next day, a DANCO was issued as part of Beane's conditional release on a charge of threats of violence against L.L. and another individual. The DANCO also prohibited Beane from having contact, including by telephone, with L.L.

In June 2018, L.L. reported to Officer Rogers of the Minneapolis police department that Beane had called her multiple times in violation of the DANCO and OFP. Rogers was familiar with L.L. because she had previously investigated the two domestic-violence-related cases involving Beane and L.L., which had resulted in the DANCO and OFP.

Beane, who was incarcerated in the Hennepin County Jail, made 24 calls to L.L. at an area-code 612 phone number between May 24 and June 1, 2018. Six of the calls had connected. In the same time frame, Beane made 127 calls to L.L. at an area-code 651 phone number. 32 of those calls connected.

Officer Rogers listened to all of the connected calls and recognized the voices of both L.L. and Beane. She was familiar with their voices because she had conducted interviews with both during her previous investigations. In one of the calls, L.L. told Beane

that he would get in trouble for contacting her. Beane responded by telling L.L. to get a new phone number. Later that day, during another call, L.L. told Beane that she obtained a new phone number, and gave him the area-code 651 number. In another call, Beane told L.L. that she is his property.

Beane was charged in June 2018, with one count of stalking, two counts of violating a no-contact order, and one count of violating an OFP. Beane waived his right to counsel in January 2019, and the jury trial occurred in February 2019. Officer Rogers testified at the trial, but L.L. did not. The jury acquitted Beane of the stalking charge, but found him guilty on both counts of violating the DANCO and the count of violating an OFP. The district court sentenced Beane to 39 months in prison. Beane appeals.

D E C I S I O N

First, Beane asserts that the state did not prove beyond a reasonable doubt that the person he contacted was L.L. When reviewing a challenge to the sufficiency of the evidence:

> [W]e carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted. The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict. The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.

State v. Griffin, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted).

Beane contends that the circumstantial-evidence standard of review should control, while the state argues that the direct-evidence standard should apply. "[D]irect evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation and alteration omitted). Because L.L. identified one of the phone numbers in question as her own during a recorded 911 call and because the testimony of Officer Rogers that the female voice on the calls belonged to L.L. was based on Rogers's personal knowledge of the victim, an inferential leap is not required. Thus, we apply the direct-evidence standard.

When an element of an offense is supported by direct evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (citing *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)).

Beane argues that the evidence is insufficient to prove that the person he contacted from jail is L.L. because L.L. did not testify that the phone numbers belonged to her. The record contradicts this argument. The evidence presented at trial shows that Beane contacted two different phone numbers from jail, one with a 612 area code and one with a 651 area code. In a transcript of a 911 call earlier in May, L.L. provided the 612 phone number to the dispatcher. The transcripts available from the jail calls to the 612 phone number reflect that Beane told L.L. to set up a new phone number. In a subsequent call on

the same day, L.L. gave the 651 phone number to Beane, and Beane called the 651 number over 100 times.

Officer Rogers testified at trial that she was familiar with L.L.'s voice from investigating the case and from previously investigating domestic incidents between L.L. and Beane. She testified that she recognized the voice in the calls from both numbers as L.L. The state correctly asserts that this is direct evidence that Beane called L.L. and that it is the role of the jury to weigh Rogers's credibility and give her testimony the appropriate weight.

When reviewed in the light most favorable to the verdict, we conclude that the evidence is sufficient for the jury to conclude beyond a reasonable doubt that L.L. was the person that Beane contacted.

Next, Beane argues that the evidence is insufficient to prove that he knowingly violated the DANCO, as required by the charging statute, because the evidence is insufficient to show that he was served with the order. Minn. Stat. § 629.75, subd. 2(b) (2016), requires only that a defendant "knows of the existence" of a DANCO. Again, the State introduced direct evidence in the form of Rogers's testimony that Beane had knowledge of the DANCO.

Rogers testified that the day after the OFP was issued (and Beane was served), a DANCO was also issued. Rogers was asked, "[A]nd that was issued while Mr. Beane was in court; is that correct?" Rogers responded, "[C]orrect, that is issued by the judge and in court." She agreed that Beane "appeared personally in court that day to receive that order." The record reflects that the DANCO was issued during Beane's first appearance on charges

stemming from an incident that occurred on May 21. When viewed in the light most favorable to the verdict, we conclude that the evidence is sufficient to support that Beane knew of the existence of the DANCO.

Beane asserts that no "record exists showing that [he] waived his right to appointed counsel." However, the record reflects that when Beane requested to discharge his attorney, the district court explained the options, including proceeding pro se, getting a public defender, or hiring private counsel. Beane chose to represent himself and was given a petition to proceed pro se. Beane stated that he wanted advisory counsel for trial. However, Beane later decided to proceed without advisory counsel rather than face a delay for trial. He signed the petition to proceed pro se after going over it with a public defender. We conclude that the record does not support Beane's argument that he did not waive his right to appointed counsel.

Beane also appears to assert that the district court judge was not impartial. However, he does not point to any specific evidence in the record to support this assertion. "An assignment of error based on mere assertion and not supported by any argument or authorities . . . is waived . . . unless prejudicial error is obvious on mere inspection." *State v. Anderson*, 871 N.W.2d 910, 915 (Minn. 2015). Because no error is obvious, we reject this argument.

Finally, Beane challenges the admission of the 911 call and the calls he made from jail, asserting that they are inadmissible hearsay. "Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). Here, the state

offered the 911 call under the excited-utterance exception to the hearsay rule, as well as non-testimonial relationship evidence pursuant to Minn. Stat. § 634.20 (2016).

The district court determined that the 911 call was not testimonial and that it fell under the hearsay exceptions for excited utterance and then-existing state of mind. The district court also concluded that only part of the 911 call was admissible and ordered that a portion of it was more prejudicial than probative and should be redacted. Thus, the district court carefully considered the arguments against admissibility for the 911 call and did not abuse its discretion by admitting the relevant portion. Similarly, the district court determined that the calls from jail were non-testimonial. Beane asserted that he had a right to confront the victim and that if L.L. did not testify, the case should be dismissed. The district court denied this motion. The record reflects that the district court applied the relevant evidentiary rules and caselaw when considering the state's motion in limine. We conclude that the district court did not abuse its discretion by admitting the 911 call or the jail calls.

Affirmed.