STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1161

State of Minnesota,
Respondent,

vs.

Juanel Anthony Mikulak,
Appellant.

Filed June 29, 2020
Affirmed
Reyes, Judge

Dakota County District Court
File No. 19HA-CR-18-2343

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

James C. Backstrom, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

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

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

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

REYES, Judge

Appellant challenges his conviction of domestic assault, arguing that (1) respondent State of Minnesota deprived him of his right to a fair trial by withholding evidence; (2) the district court deprived him of his right to a unanimous verdict by merging domestic assault

and attempted domestic assault; (3) the district court plainly erred by not instructing the jury of the statutory elements of attempted domestic assault; (4) the district court violated his Sixth Amendment right to a jury trial by basing sentencing on a domestic assault; and (5) the cumulative effect of the errors deprived him of his right to a fair trial. We affirm.

FACTS

On September 14, 2018, the state charged appellant Juanel Anthony Mikulak with one count of felony domestic assault in violation of Minn. Stat. § 609.2242, subds. 1(2), 4 (2016).[1] The state later amended the complaint to add two counts of stalking.

A five-day jury trial began on March 4, 2019. The victim, S.R., testified that she knew appellant briefly as a teenager but lost touch until they reconnected at a party in June 2018. They started dating, and appellant moved in with S.R. around mid-July. Appellant became abusive near the end of July. Most of his disputes with S.R. were fits of jealousy.

On the evening of September 11, 2018, appellant woke from their couch when S.R. sat down. Appellant thought he saw their male, part-time roommate running up the stairs and became jealous and angry. Appellant chased S.R., and S.R. "bit back a little" by calling him "a b***h." S.R. testified that this led to "[a]n eruption of fists. It was punches all up and down my body, I was curled up in the fetal position on my left." She repeatedly yelled at him to stop. Appellant then reached for her chest to perform a "five-fingered death punch," but he stopped and sat down. She counted the punches to explain to him how he went "too far" this time but "stopped counting at twenty-five."

[1] The state charged appellant under subdivision 1(2), which is enhanced to a felony under subdivision 4 because of his past felony convictions.

An hour or so after the altercation, the couple drove down the road to see a friend and "probably to pick up drugs." Appellant got mad at S.R. on the drive back, told her to get out of the car, and kept her phone. She then walked home. After not showing up to work because she overslept, her employers called the police to conduct a welfare check. S.R. did not report the assault to the officers who checked on her wellbeing, but she later confessed to a friend who questioned her about the sweatshirt and pants she wore on a 95-degree day to cover her bruises. S.R. called the police after disclosing the assault to her friend. The state submitted photographs taken by the police that showed bruising on S.R.'s body.

The jury found appellant guilty of domestic assault and not guilty of the two counts of stalking. After trial, appellant filed a "Renewed Motion for Discovery per *Brady* and Request for Review per *Paradee*"[2] discovery request after testimony from an officer indicated that the officer made several appearances at the house after the date of the incident. The state produced 58 pages of police records. One report stated:

> [S.R.] originally told officers that nobody [should] be in the residence so officers searched and located [a male]. He was taken into custody. [S.R.] then changed her story stating she allowed him in the residence, bringing him to the residence, earlier in the day. She no longer wanted him at the residence so officers transported him to the [Mall of America]. [S.R.] was advised not to lie to the police as she tied up a significant amount of resources for this when she actually brought the male to the residence.

[2] *See Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963) (establishing that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.").

At the sentencing hearing, appellant brought an oral *Brady* motion for a new trial based on the undisclosed police records. The state argued that appellant did not adequately provide notice for the motion. The district court stated, "The Court will respectfully deny the motion at this time on procedural grounds, and also on the merits. We'll leave that to the Court of Appeals." This appeal follows.

D E C I S I O N

I. The state did not deny appellant's right to a fair trial by withholding exculpatory evidence that the victim subsequently lied to police.

Appellant argues that the state violated his right to a fair trial under the *Brady* doctrine by not disclosing police reports that were unfavorable to its case. We analyze the procedural grounds and merits of appellant's *Brady* motion in turn.

A. Procedural grounds

Appellant argues that this court should ignore his procedural errors because he could have filed a postconviction petition, but he did not think it would be beneficial because the district court already rejected the motion on the merits. The state argues that the district court correctly denied the motion because (1) the state had no notice; (2) appellant did not make the motion in writing; and (3) appellant missed the required timeline for a motion for a new trial.

"Notice of a motion for a new trial must be served within 15 days after a verdict or finding of guilty." Minn. R. Crim. P. 26.04, subd. 1(3). "On appeal from a judgment, the court may review any order or ruling of the district court or any other matter, as the interests

of justice may require." Minn. R. Crim. P. 28.01, subd. 11. "We review the interpretation of procedural rules de novo." *State v. Martinez-Mendoza*, 804 N.W.2d 1, 6 (Minn. 2011).

The state disclosed the police reports on April 11, 2018, more than a month after trial and 18 days before the sentencing hearing. Because appellant timely raised the motion in relation to the state's late disclosure of evidence, appellant could still raise the *Brady* violation in a postconviction petition and appeal to this court, the district court decided the issue, and the parties have sufficiently briefed this issue, we will review it on its merits.

B. Merits

The state is under a continuing obligation to disclose unfavorable evidence in criminal cases. *Brady*, 373 U.S. at 87, 83 S. Ct. at 1196-97. A *Brady* violation occurs when (1) the evidence is favorable to the defendant; (2) the state withheld the evidence, "intentionally or otherwise;" and (3) the evidence is material because its absence would "have caused prejudice to the defendant." *Zornes v. State*, 903 N.W.2d 411, 417 (Minn. 2017). Appellate courts review alleged *Brady* violations de novo. *Id.*

The state concedes the first two prongs but argues that the suppressed evidence is not material and did not prejudice appellant. We view materiality in light of all of the trial evidence. *Id.* "Evidence is material under *Brady* if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* at 418 (quotation omitted). Useful evidence is not enough; rather, it has to "undermine confidence in the outcome." *Id.* An appellant who successfully impeaches a witness at trial without the suppressed evidence has not been prejudiced. *State v. Miller*, 754 N.W.2d 686, 706 (Minn. 2008).

Victim credibility is typically a critical component in domestic-assault trials. Here, the state noted in closing arguments not only that S.R.'s testimony is direct evidence and enough to support appellant's conviction, but that her testimony is corroborated by her prior statements and the pictures of her bruises. Appellant did not impeach S.R. with inconsistent statements, but he nonetheless effectively impeached her on cross-examination. Appellant challenged S.R.'s credibility by referencing her drug use, fluid living situation with changing roommates, and use of medication for irritability, depression, and mood swings. The jury heard enough about S.R. to weigh her character for truthfulness. The withheld evidence is not enough to undermine our confidence in the outcome, and it did not prejudice appellant.

II. The district court did not deny appellant's constitutional right to a unanimous verdict.

Next, appellant argues that district court denied his constitutional right to a unanimous verdict by not instructing the jury to determine whether he committed either domestic assault or attempted domestic assault. We disagree.

District courts have broad discretion "in choosing the language of jury instructions." *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (quotation omitted). But a district court abuses its discretion if its jury instructions "confuse, mislead, or materially misstate the law." *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015) (quotation omitted). Appellant did not object to the jury instructions at trial. "Failure to object to jury instructions at trial generally results in a forfeiture of the right to appeal on that error." *State v. Cyrette*, 636 N.W.2d 343, 346 (Minn. App. 2001), *review denied* (Minn. Feb. 19,

2002). But we may review unobjected-to jury instructions for plain error. *State v. Gunderson*, 812 N.W.2d 156, 159 (Minn. 2012) (quotation omitted). "Under the plain-error standard, we review the jury instructions to determine whether there was error, that was plain, and that affected [appellant's] substantial rights." *Id.* If these three elements are met, then we can reverse if "required to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted). Failure to properly instruct the jury on all elements of the charged offense meets the first two prongs of the plain-error test. *State v. Watkins,* 840 N.W.2d 21, 28-29 (Minn. 2013).

Here, the district court convicted appellant under Minn. Stat. § 609.2242, subd. 4, of committing a domestic assault within ten years of two or more previous qualifying offenses. A person is guilty of domestic assault who, "against a family or household member," either "(1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) *intentionally inflicts or attempts to inflict bodily harm upon another*." Minn. Stat. § 609.2242, subd. 1 (2016) (emphasis added).

The district court's jury instruction largely followed the model jury instructions, but omitted the alternative way of committing assault by attempting to harm another. *See* 10 *Minnesota Practice,* CRIMJIG 13.48 (2019). The district court's instruction changed the introduction from the model sentence of "[f]irst the defendant intentionally inflicted or attempted to inflict bodily harm" to "[f]irst the defendant assaulted S.R." It defined assault as "the intentional infliction of bodily harm upon another" and defined "bodily harm" as "physical pain or injury, illness, or any impairment of a person's physical condition."

Appellant nonetheless argues that the district court committed plain error because the verdict form stated that the jury found appellant guilty of "Domestic Assault (Intentionally Inflict or Attempt to Inflict Bodily Harm)." (Emphasis added.) But the jury instructions define the crime for the jury. *See Milton*, 821 N.W.2d at 805. We presume that juries follow the district court's instructions. *See State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005). Based on this jury instruction, the jury found appellant guilty of domestic assault by intentionally inflicting harm, not attempting to inflict harm. And under section 609.2242, subd. 1, intentionally inflicting harm is one way to commit domestic assault. Furthermore, the evidence presented to the jury pertains to a completed domestic assault. Appellant has not shown how the district court committed error. We therefore need not examine the other elements of the plain-error test. *See State v. Webster*, 894 N.W.2d 782, 786 (Minn. 2017).

III. The district court did not commit plain error by not providing an instruction for "attempt."

Appellant also argues that the district court committed plain error by not including a jury instruction for "attempt." But the jury instruction defined domestic assault and did not use the word "attempt." Because the jury instruction did not use "attempt," the district court did not need to define it. Appellant has not shown how the district court erred.

IV. The district court did not violate appellant's rights in sentencing because it applied the correct statutory maximum sentence.

Appellant argues that the district court violated his Sixth Amendment right to a jury trial by setting the statutory-maximum sentence based on a finding that appellant committed domestic assault even though the jury did not distinguish between intentional

infliction of harm and an attempt to inflict harm. But the jury found appellant guilty of domestic assault by intentionally inflicting harm consistent with Minn. Stat. § 609.2242, subd. 4. This subdivision states that anyone who violates Minn. Stat. § 609.2242, subd. 1, which includes infliction of harm or attempted infliction of harm, within ten years of two other qualifying offenses "may be sentenced to imprisonment for not more than five years." The district court sentenced appellant to 60 months, the statutory maximum for domestic assault. Appellant's argument fails.

V. The cumulative effect of the alleged errors did not deprive appellant of his right to a fair trial.

Finally, appellant argues that the cumulative effect of the district court's errors together, if not enough on their own, requires reversal. "Cumulative error exists when the cumulative effect of the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant's prejudice by producing a biased jury." *State v. Penkaty*, 708 N.W.2d 185, 200 (Minn. 2006) (quotation omitted). We have analyzed appellant's allegations of error by the district court and conclude that the district court did not prejudice appellant through single or cumulative error.

Affirmed.