

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1321**

State of Minnesota,
Respondent,

vs.

Karlwin Dupree Richards,
Appellant.

**Filed August 29, 2022
Affirmed
Worke, Judge**

Olmsted County District Court
File No. 55-CR-20-6382

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his stalking and assault convictions, arguing that the district court violated his Fifth Amendment right against self-incrimination and lost its impartiality during sentencing. We affirm.

FACTS

On January 13, 2020, A.E. and D.G. were working at a motel. D.G. heard A.E. arguing with her boyfriend, appellant Karlwin Dupree Richards, at the front desk. D.G. saw Richards hit A.E. in the face, and he separated them. Richards punched D.G. in the face. D.G. pushed Richards out the door and called 911.

The state charged Richards with felony domestic assault committed against A.E. and fifth-degree assault committed against D.G. The state also charged Richards with additional offenses committed against A.E., including pattern of stalking conduct, two counts of domestic assault, and multiple counts of violating a no-contact order. The state moved for an upward sentencing departure because, if convicted of a violent crime, Richards could qualify as a dangerous offender.

At Richards's jury trial, D.G. testified about the January 13 incident. The state presented evidence showing that Richards was violent and controlling toward A.E. The state also presented evidence that Richards attacked A.E. on November 2, 2020, and then called her frequently from the detention center, which resulted in the many charges of violating a no-contact order. A.E. did not appear to testify and was arrested for failing to respond to the subpoena.

During his trial, Richards indicated that he wanted to raise a self-defense claim regarding the January 13 incident. His attorney suggested that because Richards's testimony would be limited to the January 13 incident, cross-examination would be limited to that incident and Richards's credibility. The district court ruled that it would permit cross-examination on every count and matters relevant to Richards's self-defense claim.

Richards testified that at the motel on January 13, he said something that caused A.E. to “bl[o]w up,” grab his hair, and hit him on the head. He defended himself by pushing A.E. in the face. D.G. then pushed him, so he swung at D.G. On cross-examination, Richards denied violating the no-contact order; he stated that he thought that the order was modified and invited contact. He also denied injuring A.E. on November 2, claiming that someone else caused her injuries.

The jury found Richards guilty of 17 counts, including the assault committed against D.G. and the offenses related to his pattern of stalking conduct. The jury also found that Richards is a danger to the public. The state requested a 120-month prison sentence—an upward departure and the statutory maximum penalty. A.E. wrote a letter seeking leniency for Richards.

The district court considered Richards’s troubled background and A.E.’s letter. The district court then noted that it regretted granting Richards a dispositional departure in a previous case. The district court sentenced Richards to 120 months in prison for his stalking conviction, a departure based on the jury finding that Richards is a danger to public safety. The district court imposed a concurrent 30 months for the assault committed against D.G. This appeal followed.

DECISION

Cross-examination

Richards first argues that the district court violated his Fifth Amendment right against self-incrimination when it ruled that if he testified about one of the charged offenses, the state was permitted to cross-examine him about the other charged crimes.

When a criminal defendant takes the stand, “his credibility may be impeached and his testimony assailed like that of any other witness, and the breadth of his waiver is determined by the scope of relevant cross-examination.” *Brown v. United States*, 356 U.S. 148, 154-55, 78 S. Ct. 622, 626 (1958).

Cross-examination should be limited to the subject matter of the direct examination and matters affecting the credibility of the witness. The court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. An accused who testifies in a criminal case may be cross-examined on any matter relevant to any issue in the case, including credibility.

Minn. R. Evid. 611(b). Thus, district courts “have broad discretion to control the scope of cross-examination.” *State v. Greer*, 635 N.W.2d 82, 89 (Minn. 2001).

While Richards claims that cross-examination should have been limited to the January 13 offense, “by taking the stand, [he] waived his privilege concerning all questions bearing on the crime charged, and . . . about other crimes relevant to those elements.” *See State v. Hines*, 133 N.W.2d 371, 377 (Minn. 1964); *see also State v. Wood*, 211 N.W. 305, 306 (Minn. 1926) (stating that when a criminal defendant testifies on his own behalf, “he thereby waives his privilege, and may be cross-examined concerning any matters pertinent to the issue even if tending to show the commission of another crime”).

Here, the charged crime was pattern-of-stalking conduct. The acts that Richards allegedly committed on various dates—domestic assault and violation of a no-contact order—were intertwined with that count. *See* Minn. Stat. § 609.749, subd. 5(a), 5(b)(5), (16) (2018) (stating that a person who commits two or more acts, including domestic assault and violations of domestic-abuse no-contact orders, within a five-year period is

guilty of felony stalking). The district court properly permitted cross-examination to include inquiry relevant to the crime charged and not solely the January 13 incident.

Additionally, Richards was charged with domestic assault. Evidence of domestic conduct “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 (2018). There is “inherent value of evidence of past acts of violence committed by the same defendant against the same victim,” *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999), because it “illuminate[s] the history of the relationship, that is, [it] put[s] the crime charged in the context of the relationship between the two.” *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). Here, evidence of the other charged offenses would be admissible relationship evidence. The district court did not abuse its discretion by ruling on the parameters for cross-examination.

Resentencing

Richards also argues that he is entitled to resentencing by a different judge because the district court lost its impartiality at sentencing.

A criminal defendant has a fundamental right to a fair trial before an impartial judge. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). “A judge must maintain the integrity of the adversary system at all stages of the proceedings.” *State v. Schlienz*, 774 N.W.2d 361, 367 (Minn. 2009). Judges must disqualify themselves from “any proceeding in which the judge’s impartiality might reasonably be questioned.” Minn. R. Jud. Conduct 2.11(A). This court reviews de novo whether a judge has violated the code of conduct. *Dorsey*, 701

N.W.2d at 246. When a criminal defendant is deprived of the constitutional right to an impartial judge, “automatic reversal is required.” *Id.* at 253.

A.E.’s contempt hearing

Richards first argues that the district court was not impartial at his sentencing because the judge prioritized his personal concern for A.E. over his duty of impartiality. Richards claims that the district court improperly held a hearing outside of his presence, and at this hearing, the judge counseled A.E. about her relationship with Richards, which could have undermined her decision to support Richards at sentencing.

First, the district court did not improperly hold a hearing outside of Richards’s presence. A.E. was arrested after she failed to appear at Richards’s trial as instructed in a subpoena. The day after the jury found Richards guilty of the charges, the district court held a hearing to address A.E.’s case. Thus, this was not a hearing at which Richards had a right to be present because it was to address A.E. being held in jail for contempt.

Second, the district court stated that it asked certain questions at A.E.’s hearing to understand if she was going to be safe if released from jail. For example, the district court stated that it wanted to talk to A.E. about her failure to respond to the subpoena and her “situation.” And the district court asked A.E. about her living arrangements and her future education/employment plans.

The district court stated that it was not going to go into A.E.’s reasons for avoiding the trial but told her that contempt of court was a serious thing. The district court then stated that, based on evidence viewed during Richards’s trial, nobody was interested in prosecuting A.E. for ignoring the subpoena. The district court stated: “I’m just adding my

voice to those who would tell you this guy doesn't care about you at all. If he did, he wouldn't hurt you like that. So he's not going to be a danger to you for a while.”

The prosecutor then identified several individuals, including himself, who could talk to A.E. about victim-advocate services. A probation agent similarly encouraged A.E. to contact victim services and meet with a social worker. The district court then stated that everyone involved wanted the best for A.E. Despite Richards's claim that the district court improperly counseled A.E., the record shows that the district court was first concerned that A.E. would harm herself if released from jail. The district court, the prosecutor, and a probation agent then all expressed concern for A.E.'s well-being and encouraged her to seek services.

Finally, the district court's statements to A.E. did not influence her decision to support Richards at sentencing. A.E. stated that she had forgiven Richards, pleaded with the district court to be lenient, and wrote a letter supporting Richards at sentencing. The record does not support Richards's claim that the district court lost its impartiality due to comments made to A.E. at her contempt hearing.

Independent investigation

Richards also argues that the district court conducted an improper independent investigation that influenced its sentencing decision. The right to an impartial judge “requires that conclusions reached by the [judge] be based upon the facts in evidence . . . and prohibits the [judge] from reaching conclusions based on evidence sought or obtained beyond that adduced in court.” *Dorsey*, 701 N.W.2d at 249-50 (citation omitted).

In 2018, the district court sentenced Richards for felony domestic assault. The district court departed from the presumptive prison sentence and placed Richards on probation. At sentencing for the current convictions, the district court stated:

I did a little looking into Mr. Richards' history, and I found that there's a basis for me to regret already being lenient to Mr. Richards. . . . I was a judge who departed dispositionally downward in Mr. Richards' case in sentencing the assaults on his sister and his nephew.

. . . .
I put him on probation in those matters, and this morning in the preparation for this sentencing I went back to do a calculation of just how long Mr. Richards would've been in prison . . . if I'd put him in prison as the guidelines called for, and what I found is . . . he would have been in prison but about to get out on January 13 of 2020, when instead he was at the Motel 6 assaulting [A.E. and D.G.] . . . In other words, he wouldn't have been in Rochester, Minnesota to commit the first of the assaults that's involved in this case.

The district court referenced its past sentencing. The warrant of commitment is included as an exhibit *in the record* and referenced in the presentence-investigation report. *See id.* (stating that district court is prohibited from reaching conclusions based on evidence beyond that adduced in court). In contrast, this court has determined that a defendant is denied a constitutional right to an impartial judge when a judge investigates information *outside of the record*. *See State v. Scudder*, No. A21-1081, 2022 WL 1532553, at *1, *4 (Minn. App. May 16, 2022) (stating judge lost impartiality when revealed investigation into how store priced its merchandise); *State v. Leckner*, No. A19-1007, 2020 WL 3172651, at *2, *3 (Minn. App. June 15, 2020) (stating judge lost impartiality when revealed it investigated defendant's claims he could not get services at prison by visiting

prison to observe services offered). The district court did not conduct an independent investigation, and it did not lose its impartiality by imposing a lawful sentence.

Pro se claims

Richards presents several pro se claims. Richards argues that his trial attorney was ineffective for failing to investigate an alibi witness, failing to file motions, failing to argue mitigating factors at sentencing, and providing misleading advice. Richards argues that the prosecutor committed misconduct by using a mugshot for witness identification, admitting improper evidence, calling A.E.'s mother as a witness because she was biased against him, and degrading him at sentencing. Finally, Richards argues that the district court violated his Sixth Amendment right to confront A.E. because the case should have been dismissed when she refused to testify against him.

Richards fails to support his claims with legal argument or authority, and we discern no obvious prejudicial error. Richards's pro se claims are forfeited and we will not consider them. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (stating that this court "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority"); *Louden v. Louden*, 22 N.W.2d 164, 166 (Minn. 1946) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.").

Affirmed.