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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-667**

State of Minnesota,
Respondent,

vs.

Diallo Desean Coleman,
Appellant.

**Filed March 8, 2011
Affirmed in part, reversed in part, and remanded
Klaphake, Judge**

Ramsey County District Court
File No. 62-CR-09-15504

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Mark N. Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Klaphake, Presiding Judge; Johnson, Chief Judge; and Larkin, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Diallo Desean Coleman challenges his conviction for domestic assault by strangulation, Minn. Stat. § 609.2247, subd. 2 (2008), arguing that the district court

erred in its evidentiary rulings and that the evidence was insufficient to support the verdict. Appellant also contends that the district court erred by imposing separate sentences for this conviction and his conviction for false imprisonment, Minn. Stat. § 609.255, subd. 2 (2008).

Because the district court's ruling excluding evidence of the victim's drug use occurring after the offense was not an abuse of discretion and because the evidence is sufficient, we affirm appellant's conviction of domestic abuse by strangulation. But because the domestic abuse and false imprisonment offenses were part of a single behavioral incident, we reverse appellant's sentence and remand this matter to the district court for resentencing.

D E C I S I O N

Evidentiary Ruling

We will not reverse the district court's evidentiary rulings absent a clear abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Appellant must establish not only an abuse of discretion but also that he was prejudiced because of the court's ruling. *Id.*

Appellant argues that the district court abused its discretion by refusing to permit defense counsel to cross-examine the medical witness about a blood test showing possible signs of methamphetamine and marijuana use taken from the victim, J.P., when she went to the emergency room on the day following the offense. In response to a motion in limine by the state, the district court ruled that evidence of J.P.'s drug use was inadmissible unless (1) the defense could show that it impacted her ability to remember

events on the date of the offense; (2) the defense sought to impeach J.P. if she denied ever using drugs; or (3) J.P. opened the door in some way. Defense counsel sought to cross-examine the medical witness about the drug screen after he testified that J.P. was anxious, tearful, and traumatized. Defense counsel asserted that this opened the door to admission of the testimony, but the district court sustained the state's objections to this cross-examination.

A defendant has a constitutional right to fundamental fairness and the opportunity to present a complete defense. *State v. Crims*, 540 N.W.2d 860, 865 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996); U.S. Const. amend. V; Minn. Const. art. 1, § 7. To this end, a defendant has the right to present evidence that is material and favorable to his theory of defense. *Crims*, 540 N.W.2d at 866. This does not include the right to present evidence that is irrelevant or more prejudicial than probative. *Id.*

A witness opens the door to elicitation of otherwise prohibited evidence when

one party by introducing certain material creates in the opponent a right to respond with material that would otherwise be inadmissible. The doctrine is essentially one of fairness and common sense, based on the proposition that one party should not have an unfair advantage and that the factfinder should not be presented with a misleading or distorted representation of reality.

State v. Bailey, 732 N.W.2d 612, 622 (Minn. 2007) (citations and quotations omitted).

Here, appellant has failed to show that the medical witness's statement that J.P. was anxious, tearful, and traumatized presented a misleading or distorted representation of reality. First, the medical witness acknowledged that these emotions could be the result of other factors, without specifying those factors. Second, the drug screen was

taken 48 hours after the offense; ostensibly, the drug evidence would be relevant to show J.P.'s lack of memory or distortion of reality, but no offer of proof was made that linked these results to the victim's state at the time of the offense. *See State v. Harris*, 713 N.W.2d 844, 848 (Minn. 2006) (stating that in absence of an offer of proof, appellate court cannot assess the significance of the excluded testimony, unless it is readily apparent from the evidence). Third, J.P. herself testified that she was intoxicated and blacked out during the assault; given this testimony, it is unlikely that appellant was prejudiced by exclusion of the drug screen results, which would add very little in the way of material evidence. Under these circumstances, the district court did not abuse its discretion by refusing to permit defense counsel to pursue this line of questioning.

Sufficiency of the Evidence

Appellant contends that the evidence is insufficient to sustain the jury's guilty verdict on the charge of domestic assault by strangulation. When a defendant challenges the sufficiency of the evidence, we review the evidence "to determine whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged." *State v. McArthur*, 730 N.W.2d 44, 49 (Minn. 2007) (quotation omitted). We view the evidence in the light most favorable to the jury's verdict. *State v. Carufel*, 783 N.W.2d 539, 546 (Minn. 2010). It is the jury's role to determine the weight and credibility of testimony of individual witnesses. *Id.*

The charge of domestic assault by strangulation requires proof of (1) an assault, defined in Minn. Stat. § 609.02, subd. 10 (2008), as an act done with intent to cause fear

in another of immediate bodily harm or intentional infliction of, or an attempt to inflict bodily harm on another; (2) against a family or household member; (3) by strangulation, defined as “intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.” Minn. Stat. § 609.2247, subd. 1. Appellant’s primary contention is that there is insufficient evidence of strangulation.

The evidence here is sufficient to sustain the conviction: (1) J. P. testified that appellant duct taped her hands and feet and held her down, pushing on her throat until she had trouble breathing; (2) both on the day of the offense and on the following day, J.P. consistently told police and medical personnel that her throat hurt and it was swollen; (3) the first police officer in the room testified that appellant was sitting astride J.P. on a mattress and that although he could not see appellant’s hands, his arms were in a position consistent with strangling J.P.; (4) the same officer testified that appellant was so intent on what he was doing that he appeared not to notice police officers entering the room; (5) the second officer in the room testified that he saw appellant straddling J.P.’s abdomen and saw appellant’s hands around J.P.’s throat; (6) this officer testified that appellant was pushing so hard that the mattress was compressed; (7) the medical witness testified that although J.P. did not have obvious bruises or petechiae, she had other signs of strangulation, including a painful throat and difficulty swallowing; and (8) strangulation requires only the *impediment* of “normal breathing or circulation of blood,” Minn. Stat. § 609.2247, subd. 1(c), not the full cessation of breathing or blood circulation.

Although appellant presented a witness who testified that appellant did not strangle J.P., her testimony was impeached by a prior statement to the contrary. The jury is the final arbiter of credibility and could reasonably have rejected this testimony. *See Carufel*, 783 N.W.2d at 546.

The evidence here is sufficient to sustain appellant's conviction of domestic abuse by strangulation.

Sentencing

Appellant asserts that the district court erred by imposing separate sentences for his convictions of false imprisonment and domestic abuse by strangulation. Appellant contends that both charges were part of a single behavioral incident and that therefore the district court should impose only one sentence for the more serious crime of domestic assault by strangulation.

Minn. Stat. § 609.035, subd. 1 (2010), precludes imposition of multiple sentences if a defendant's conduct constitutes more than one offense. Minnesota courts interpret this statute to mean that a district court may not impose multiple sentences for crimes arising out of a single behavioral incident. *State v. Bauer*, 792 N.W.2d 825, 828 (Minn. 2011). In order to determine whether intentional crimes¹ arise out of a single behavioral incident, the court considers "factors of time and place and whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." *Id.*

¹ False imprisonment and domestic assault by strangulation are both crimes requiring intentional conduct. *See* Minn. Stat. §§ 609.02, subd. 10 (defining "assault" to include intentional acts); .255, subd. 2 (defining "false imprisonment" as "intentionally confin[ing] or restrain[ing]" another).

(quotation omitted). “The application of this test depends heavily on the facts and circumstances of the particular case.” *Id.*

The district court’s determination of whether multiple offenses are part of a single behavioral act is a fact question and this court reviews this determination for clear error. *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001). The district court’s decision to impose multiple sentences is reviewed for an abuse of discretion. *Id.*

Here, as the state concedes, there was a commonality of time and place; the state argues that appellant was not motivated by a single criminal objective. The district court found that “the defendant’s act of falsely imprisoning [J.P.] and his act of strangling her were neither necessary to the commission of a single crime nor motivated by an intent to commit that crime.” We do not agree. Appellant’s actions suggest a single criminal objective: to forcibly silence J.P. or otherwise control her behavior. We conclude that the district court erred by finding that these convictions did not arise out of a single behavioral incident. We therefore reverse appellant’s sentences and remand to the district court for resentencing consistent with this opinion.

Affirmed in part, reversed in part, and remanded.