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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0898**

State of Minnesota,
Respondent,

vs.

Chateram Prashad,
Appellant.

**Filed April 10, 2017
Affirmed
Kirk, Judge**

Hennepin County District Court
File No. 27-CR-15-6465

Lori Swanson, 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, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Schellhas, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the district court erred by depriving him of his right to a unanimous verdict when it

failed to issue a specific unanimity instruction to the jury. Because any error did not affect appellant's substantial rights, we affirm.

D E C I S I O N

“The jury’s verdict must be unanimous in all cases.” Minn. R. Crim. P. 26.01, subd. 1(5). “But a jury need not agree unanimously with respect to the alternative means or ways in which a crime can be committed.” *State v. Rucker*, 752 N.W.2d 538, 547 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

Respondent State of Minnesota charged appellant Chateram Prashad with first-degree criminal sexual conduct for his actions involving R.C., his great niece. At trial, appellant did not request a specific unanimity instruction and he did not object to the jury instructions. “A defendant’s failure to propose specific jury instructions or to object to instructions before they are given to the jury generally constitutes a waiver of the right to appeal.” *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Despite appellant’s failure to object, this court may review the jury instructions under the plain-error analysis. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under the plain-error test, this court examines the jury instructions to see if there was (1) error, (2) that was plain, and (3) that affected appellant’s substantial rights. *State v. Gunderson*, 812 N.W.2d 156, 159 (Minn. App. 2012).

Relying on *State v. Stempf*, appellant argues that the district court erred in failing to instruct the jury that they had to reach a unanimous verdict on one of the four alleged incidents of sexual contact between himself and R.C. 627 N.W.2d 352 (Minn. App. 2001). Appellant asserts that the prosecutor presented evidence of multiple, distinct acts that took

place on different dates instead of evidence of alternate means of committing one act of sexual conduct on one date. Appellant further asserts that the prosecutor's closing argument highlighted four separate incidents of sexual contact between R.C. and appellant and informed the jury that it could find appellant guilty based on any of the alleged incidents. Appellant urges this court to reverse his conviction because this error was prejudicial and affected the outcome of his case. We disagree.

After reviewing the record, we conclude that we do not need to decide whether the district court erred by omitting a specific-unanimity instruction because the alleged error did not affect appellant's substantial rights. *State v. Wenthe*, 865 N.W.2d 293, 299 (Minn. 2015). An error affects a defendant's substantial rights "if the error was prejudicial and affected the outcome of the case." *Griller*, 583 N.W.2d at 741. An error is prejudicial "if there is a reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted). The defendant bears the "heavy burden" of proving an error affected his substantial rights. *Id.*

Here, the state's evidence was strong because R.C. consistently testified under cross-examination about the first incident of sexual contact between herself and appellant, which was consistent with her CornerHouse interview. R.C. testified that the first incident occurred in July 2012 when she was eight years old. She testified that she was in the basement watching television at her great aunt's residence when appellant sat down next to her on the couch, pulled her shorts down, and "he put his finger inside me." R.C. testified that appellant then went back upstairs and she stayed in the basement because she was scared. The jury heard and received a transcript of R.C.'s CornerHouse interview.

The record also establishes that R.C. sought out and spoke with the school social worker about multiple incidents of sexual contact with appellant, which prompted the police investigation. The CornerHouse interviewer testified that it is not uncommon for children who are R.C.'s young age to delay reporting sexual abuse. The CornerHouse interviewer also testified that it is not uncommon for children to be unable to describe each incident of sexual abuse in specific detail because "the trauma can have an influence on memory in a variety of ways."

The state inappropriately informed the jury that if they had reasonable doubts about the second or third incident of sexual contact between R.C. and appellant, it could rely on R.C.'s consistent testimony regarding the first incident to convict appellant of first-degree criminal sexual conduct. But the state's instruction was limited to a portion of its closing argument, and it did not excessively dwell on any particular incident of sexual abuse at trial. Appellant did not present strong evidence that he had not committed the crimes, and he did not object to the district court's jury instructions or to the state's closing argument. On this record, "there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict." *State v. Hohenwald*, 815 N.W.2d 823, 834 (Minn. 2012) (quotation omitted).

Finally, in his pro se brief, appellant asserts that there was insufficient evidence presented at trial to support his conviction. Our review of a sufficiency-of-the-evidence challenge is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. DeRosier*, 695 N.W.2d 97, 108

(Minn. 2005) (quotation omitted). “A defendant bears a heavy burden to overturn a jury verdict.” *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). As noted above, the prosecution’s evidence was substantial in this case. Appellant’s assertion to the contrary, which is not supported by any argument or authority, does not meet the heavy burden that is required. Accordingly, we conclude that appellant’s conviction is supported by sufficient evidence.

Affirmed.