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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1245**

State of Minnesota,
Respondent,

vs.

Israel Davis,
Appellant.

**Filed July 17, 2017
Affirmed in part, reversed in part, and remanded
Halbrooks, Judge**

Stearns County District Court
File No. 73-CR-15-9239

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his convictions of promotion of prostitution and sex trafficking in violation of Minn. Stat. § 609.322, subd. 1a (2012), arguing that the district court erred by (1) permitting expert testimony regarding sex trafficking, (2) following the Minnesota Sentencing Guidelines Commission and imposing a presumptive sentence for a conviction of aggravated sex trafficking and a permissive consecutive sentence for another conviction, and (3) entering judgments of conviction on six counts. Because we conclude that the district court did not abuse its discretion by admitting the expert testimony, we affirm in part. Because imposition of an aggravated sentence and a consecutive sentence based on the same victim exaggerates the criminality of the offense and because the district court erred by entering judgments of conviction on counts II, III, VI, and VIII, we reverse in part and remand to the district court for resentencing and to vacate the adjudications on counts II, III, VI, and VIII.

FACTS

In January 2014, appellant Israel Davis met B.R. when she was working as a hotel maid and persuaded her to work as a prostitute for him. Davis told B.R. that he used backpage.com for advertising his prostitutes, and, at Davis's request, B.R. sent him photos to use in an advertisement for her.

B.R. engaged in prostitution for Davis nearly every day from January 2014 to July 2014. Davis procured rooms at local hotels, transported B.R. or arranged for her transportation to the hotels or other locations where she engaged in prostitution, managed

her advertisements, exchanged text messages with potential customers, and ensured that the customers left at the agreed time. Davis threatened or controlled B.R. by giving her “the look” and on one occasion grabbed her throat and squeezed it. In July 2014, B.R. stopped engaging in prostitution for Davis.

In March 2014, Davis met a second victim, J.R., and told her that she could earn up to \$800 per day if she worked as a prostitute for him. After J.R. accepted Davis’s offer, Davis told her the words and tone of voice that she should use when talking to prospective customers and asked J.R. for a photo of herself to use in a backpage.com advertisement. J.R. complied with the request and an advertisement, in which she offered to engage in prostitution, was placed.

A few days later, J.R. met Davis and several other people in a hotel. Davis gave her a script and told her how to answer calls. But J.R. became frightened and refused to answer any calls or engage in prostitution. A few days later, J.R. contacted the police department and gave a statement about her interactions with Davis.

In July 2015, B.R. was prostituting herself when an undercover police officer responded to her advertisement and detained her. B.R. agreed to give a statement to the officer about Davis’s prostitution business.

On October 9, 2015, law enforcement identified Davis while executing an arrest warrant for another individual. Davis was subsequently arrested and charged with ten

counts of soliciting prostitution, promotion of prostitution, and receiving profits from prostitution.¹

Following a bench trial, the district court convicted Davis of three counts of promoting prostitution and three counts of engaging in sex trafficking. The district court sentenced Davis to 228 months for engaging in sex trafficking of B.R. (count V) and a consecutive 96 months for engaging in sex trafficking of J.R. (count X). This appeal follows.

D E C I S I O N

I.

Prior to trial, the prosecutor moved the district court to allow Special Agent Ann Quinn to testify as an expert in sex trafficking. Quinn is a special agent with the Minnesota Bureau of Criminal Apprehension Predatory Offenders Unit and has been a part of hundreds of investigations involving sex trafficking. Davis objected, arguing that Quinn's testimony would not be relevant or helpful. The district court overruled the objection.

Davis contends that the district court erred when it permitted Quinn to testify. "The admission of expert testimony is within the broad discretion accorded [to] a [district] court, and rulings regarding materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence may be reversed only if the [district] court clearly abused its

¹ The complaint was later amended to 14 counts of engaging in prostitution and promoting prostitution, but four of the counts were dismissed when a third victim who failed to appear at trial could not be found.

discretion.” *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999) (quotation and citation omitted).

Minn. R. Evid. 702 provides: “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” “The basic consideration in admitting expert testimony under Rule 702 is the helpfulness test” *State v. Greninger*, 569 N.W.2d 189, 195 (Minn. 1997). Expert testimony fails the helpfulness test if it “is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury’s ability to reach conclusions about that subject which is within their experience.” *State v. Helterbride*, 301 N.W.2d 545, 547 (Minn. 1980). Evidence must also be relevant to be admissible. Minn. R. Evid. 402. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401.

Davis asserts that only the following facts were relevant to the charges:

whether Davis promoted prostitution by (1) soliciting or procuring patrons, or (2) providing or leasing hotel rooms, admitting a patron to a place of prostitution, or transporting [B.R.] to aid in prostitution, and whether Davis engaged in sex trafficking by (1) recruiting, enticing, or obtaining by any means [B.R.] or [J.R.] to aid in their prostitution, or (2) receiving profits derived from [B.R.’s] prostitution.

Because B.R. and J.R. testified to these facts, Davis asserts that the only remaining issue was their credibility and that Quinn’s testimony was not relevant to that determination.

The state contends that because the experiences and reactions of victims and the structure and methods involved in sex trafficking are beyond the general knowledge and experience of a fact-finder, Quinn's testimony enabled the district court to better evaluate B.R.'s and J.R.'s testimony, appreciate the nature of their relationships with Davis, and understand sex trafficking in general. Quinn testified to several aspects of sex trafficking that were helpful to the district court. She noted the differences between sex trafficking and prostitution. She testified that sex traffickers use websites like backpage.com to post advertisements for women and explained the terms commonly found in the advertisements. Quinn also explained how traffickers typically operate their businesses and control the women who work for them.

In its findings of fact, conclusions of law, and order for entry of judgment of conviction, the district court stated:

[Quinn] provided general information regarding the subject matter of the case, but had no case-specific information about this matter other than the criminal complaint. Some of the practices described by [Quinn] are consistent with the testimony of [B.R.] and [J.R.] and others are not. [Quinn's] specialized knowledge was helpful to the trier in understanding the evidence presented and is admissible under Rule 702 of the Minnesota Rules of Evidence.

Because Quinn's testimony related generally to the charges against Davis and was helpful to the district court, we conclude that the district court properly exercised its discretion by allowing her testimony.

II.

Davis argues that the district court erred in sentencing him because the Minnesota Sentencing Guidelines Commission exceeded its authority when it provided for a mandatory 48-month upward durational departure if specific aggravating factors are proven in first- and second-degree sex-trafficking cases. The state contends that the commission did not establish a departure but only a presumptive sentence. “The interpretation of a statute and the sentencing guidelines are questions of law that we review de novo.” *State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009).

Davis was sentenced on two counts of second-degree sex trafficking. A defendant convicted of second-degree sex trafficking is subject to imprisonment for not more than 15 years. Minn. Stat. § 609.322, subd. 1a (2012). But if aggravating factors are present, the maximum imprisonment is not more than 25 years. *Id.*, subd. 1(b) (2012). Here, the district court sentenced Davis to 228 months on the offense involving B.R. because it involved a sex-trafficking victim who suffered bodily harm during the commission of the offense. *Id.*, subd. 1(b)(2). The district court imposed a consecutive 96-month sentence for the offense involving J.R. because it “involved more than one sex trafficking victim.” *Id.*, subd. 1(b)(4).

When a defendant is sentenced under Minn. Stat. § 609.322, subd. 1(b),

the presumptive sentence is determined by locating the duration in the appropriate cell on the applicable Grid defined by the offender’s criminal history score and the underlying crime with the highest severity level, or the mandatory minimum for the underlying crime, whichever is longer, and adding:

- a. 48 months, if the underlying crime was completed.

Minn. Sent. Guidelines 2.G.9 (2013).

The commission has the authority to establish “[a] presumptive, fixed sentence for offenders for whom imprisonment is proper.” Minn. Stat. § 244.09, subd. 5(2) (2012). Minnesota Sentencing Guidelines 2.G.9 establishes a presumptive sentence for a defendant who is convicted of sex trafficking when aggravating factors are present. It states: “*the presumptive sentence* is determined by locating the duration in the appropriate cell on the applicable Grid” and adding “48 months, if the underlying crime was completed.” Minn. Sent. Guidelines 2.G.9 (emphasis added). Based on the plain language of the statutes and the sentencing guidelines, we conclude that the commission acted within its authority when it established this presumptive sentence.

III.

Davis asserts that the district court’s imposition of consecutive sentences unfairly exaggerates the criminality of his conduct. We review the district court’s imposition of consecutive sentences for a clear abuse of discretion. *State v. Smith*, 541 N.W.2d 584, 590 (Minn. 1996).

The district court accepted the recommendation contained within the presentence investigation report and sentenced Davis to 228 months for engaging in sex trafficking of B.R. (count V), which includes an additional 48 months because the district court found that B.R. “suffered bodily harm during the commission of the offense,” Minn. Stat. § 609.322, subd. 1(b)(2), and 96 months for engaging in sex trafficking of J.R. (count X), which includes an additional 48 months because the district court found that “the offense

involved more than one sex trafficking victim,” Minn. Stat. § 609.322, subd. 1(b)(4), to be served consecutively. The sentencing guidelines permit consecutive sentences for Davis’s sex-trafficking convictions, and both of his sentences are within the parameters set forth by the guidelines. Minn. Sent. Guidelines 2.F.2.a.(1)(ii), 2.G.9.a, 4.B, 6.A (2013). In imposing consecutive sentences, the district court stated:

But I do not have any doubt in my mind at all that you trafficked B.R. for a long period of time and that you attempted to do the same with [J.R.]. And although there was only one incident of physical violence, I do find it egregious that you would take B.R. at a time when she had been sober for a year and offer her meth and the life that you put her through for those six months.

The district court also noted Davis’s unsuccessful pretrial attempt to pay J.R. not to testify against him.

Consecutive sentencing of sex-trafficking convictions with multiple victims “is permissive and within the broad discretion of the [district] court.” *State v. Richardson*, 670 N.W.2d 267, 284 (Minn. 2003); Minn. Sent. Guidelines 2.F.2.a.(1)(ii), 6.A. “A district court’s decision regarding permissive, consecutive sentencing will not be disturbed unless the resulting sentence unfairly exaggerates the criminality of the defendant’s conduct.” *State v. Rhoades*, 690 N.W.2d 135, 139 (Minn. App. 2004). Appellate courts are “guided by past sentences imposed on other offenders” when determining whether the sentence unfairly exaggerates the severity of the offense. *State v. McLaughlin*, 725 N.W.2d 703, 715 (Minn. 2007) (quotation omitted).

The evidence demonstrates that Davis lured B.R. into prostitution by providing her with methamphetamine, to which she was formerly addicted. Davis had B.R. engage in

prostitution almost daily for approximately six months, maintaining control over her with methamphetamine and, on one occasion, physical force. Davis also attempted to use J.R.’s addiction to methamphetamine to lure her into prostitution. Based on our review of this record and the sentences imposed in similar cases, we conclude that the district court acted within its discretion when it imposed permissive consecutive sentences in this matter.

But we conclude that the imposition of consecutive sentences in conjunction with the 96-month sentence for Davis’s conviction of sex trafficking involving J.R. does exaggerate the criminality of this offense. In sentencing this offense, the district court imposed permissive consecutive sentences based on the multiple-victim exception and it imposed a 96-month sentence because “the offense involved more than one sex trafficking victim.” Minn. Stat. § 609.322, subd. 1(b)(4). The district court’s reliance on the same factor—multiple victims—to impose a longer presumptive sentence and a consecutive sentence violates the principle that the district court may not impose a sentence that punishes a defendant twice for the same conduct. *See State v. Edwards*, 774 N.W.2d 596, 601 (Minn. 2009) (“[T]he district court is not permitted to impose an upward departure if the sentence will unfairly exaggerate the criminality of the defendant’s conduct, or punish a defendant twice for the same conduct.”); *see also State v. Thompson*, 720 N.W.2d 820, 830 (Minn. 2006) (concluding that “double counting” a fact as both proof of an element of theft by swindle and an aggravating factor is impermissible). Because the imposition of a consecutive sentence and the enhanced sentence under Minn. Stat. § 609.322, subd. 1(b)(4), were both based on the existence of multiple victims, we reverse and remand for

resentencing the conviction on count X in accordance with the principle upheld in *Edwards*.

IV.

Davis contends that the district court erred when it entered multiple convictions under the same statute for each victim. The state agrees. Minn. Stat. § 609.04, subd. 1 (2012) provides: “Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” This statute “bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985).

The district court convicted Davis of two counts of promoting prostitution under Minn. Stat. § 609.322, subd. 1a(2), and two counts of sex trafficking under Minn. Stat. § 609.322, subd. 1a(4), for his conduct regarding B.R. It convicted Davis of one count of promoting prostitution under Minn. Stat. § 609.322, subd. 1a(2), and one count of sex trafficking under Minn. Stat. § 609.322, subd. 1a(4), for his conduct regarding J.R. But the district court only sentenced Davis for one count of sex trafficking for his conduct regarding B.R. and one count of sex trafficking for his conduct regarding J.R. We therefore reverse and remand to the district court with directions to vacate the adjudications of Davis’s convictions other than the two counts on which it sentenced him. We note that if an adjudicated conviction is later vacated, one of the remaining unadjudicated convictions can then be formally adjudicated and a sentence imposed. *See State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984).

V.

In his pro se supplemental brief, Davis argues that the testimony of B.R. and J.R. was not credible because it was inconsistent and false. But “[a]ssessing witness credibility and the weight given to witness testimony is exclusively the province of the [fact-finder].” *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). And the district court made explicit factual findings that both B.R. and J.R. were credible. We therefore conclude that Davis’s pro se argument lacks merit.

Affirmed in part, reversed in part, and remanded.