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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1336**

State of Minnesota,
Respondent,

vs.

Jason Howard Sindt,
Appellant.

**Filed May 8, 2017
Reversed and remanded
Bjorkman, Judge**

Mahnomen County District Court
File No. 44-CR-16-199

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

Darlene Rivera Spalla, Mahnomen County Attorney, Mahnomen, Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions for assault and for violating a domestic-abuse no-contact order (DANCO), arguing that the district court incorrectly instructed the deliberating jury and committed evidentiary error. Because the district court plainly erred by instructing the jury that it could not reach a partial verdict, we reverse and remand for a new trial.

FACTS

On March 2, 2016, appellant Jason Howard Sindt and his then-girlfriend, R.R., rented a room at a casino hotel in Mahanomen. At the time, a DANCO prevented Sindt from having contact with R.R. As the evening progressed, R.R. and Sindt began to argue about Sindt's contact with other women. The argument escalated to a physical altercation in which Sindt choked, struck, and threatened to kill R.R. Respondent State of Minnesota charged Sindt with third-degree assault, making terroristic threats, domestic assault by strangulation, domestic assault, fifth-degree assault, violating a DANCO, and kidnapping.

Before trial, the state moved to introduce evidence of prior domestic assaults of R.R. by Sindt under Minn. Stat. § 634.20 (2014). The district court granted the state's motion. Sindt's counsel then sought admission of evidence of R.R.'s past assaultive behavior toward Sindt. The district court denied the request, reasoning that section 634.20 is silent as to whether a victim's past acts of violence are admissible as relationship evidence.

Both R.R. and Sindt testified about Sindt's prior acts of domestic abuse. But Sindt did not stipulate to the related convictions. After the state rested and without moving to

reopen its case, the state asked the district court to receive additional exhibits. These exhibits included certified copies of the three convictions, certified copies of the related citations and complaints, the incident reports, and a certified copy of the DANCO. Sindt did not object and the district court admitted the exhibits.

After the jury had deliberated for two and a half hours, it informed the district court that it had a question. The question had two parts: the jury wanted to know (1) if it had to reach a verdict on all seven counts and (2) if it could be undecided on one count. Outside the presence of the jury, counsel for both parties indicated they did not think a partial verdict was possible. The district court agreed, explained how it intended to respond, called the jury in, and instructed them as follows:

Ladies and gentlemen, you have submitted to me a question. And your question states, “Do we need to reach a verdict on all seven counts or can we be undecided on one count?” And here’s my answer to you and I’ll give it—it’s a two-part question and I’ll give you a two-part answer. “Do you need to reach a verdict on all seven counts?” Yes, [you] do need to reach a verdict on all seven counts. “Can you be undecided on one count?” No, you cannot.

As it dismissed the jury, the district court added, “I do need you to have a verdict on all seven.” Sindt did not object before or after the instruction was given.

Approximately 20 minutes later, the jury returned a verdict finding Sindt guilty of domestic assault, fifth-degree assault, and violating a DANCO. Sindt appeals.

D E C I S I O N

Sindt argues that the district court erred by instructing the deliberating jury that it could not render a partial verdict. “Failure to object to jury instructions before they are

given generally constitutes a forfeiture of the right to an appeal based on those instructions. But failure to object will not preclude appellate review if the instructions constitute plain error affecting substantial rights or an error of fundamental law.” *State v. Vance*, 734 N.W.2d 650, 654-55 (Minn. 2007) (citation omitted), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). Error is plain “when it contravenes a rule, case law, or a standard of conduct, or when it disregards well-established and longstanding legal principles.” *State v. Brown*, 792 N.W.2d 815, 823 (Minn. 2011). And error affects substantial rights if there is a “reasonable likelihood that the error had a significant effect on the jury verdict.” *Vance*, 734 N.W.2d at 660 n.8. If plain error is demonstrated, “we may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (quotation omitted).

We conclude that the district court’s instruction constitutes plain error for two reasons. First, Minnesota law permits partial verdicts. Minn. R. Crim. P. 26.03, subd. 20(7) authorizes district courts to “accept a partial verdict if the jury has reached a verdict on fewer than all of the charges and is unable to reach a verdict on the rest.” And the supreme court has concluded “that it was not improper to accept a verdict on only some of the counts charged when the jury was unable to reach a verdict on all counts.” *Stage v. Olkon*, 299 N.W.2d 89, 105 (Minn. 1980). The district court’s error in instructing the jury to the contrary is plain.

Second, Minnesota law prohibits district courts from instructing a jury that it may not deadlock. In *State v. Olsen*, this court reasoned that such a charge is erroneous for two

reasons: it misstates the law, which clearly allows a hung jury, and it coerces a jury because such an instruction “may cause jurors holding a minority viewpoint to surrender their honest beliefs in order to reach a unanimous verdict.” 824 N.W.2d 334, 338 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013); *see also State v. Young*, 610 N.W.2d 361, 362 (Minn. App. 2000) (stating that “it is not permissible for the court to tell the jury that it may not deadlock”), *review denied* (Minn. July 25, 2000). The district court’s instruction misstated the law and constitutes plain error.

The state argues that the invited-error doctrine applies and that we should consider Sindt to have “forfeited” his challenge because he “affirmatively agreed with and requested the instruction.” We are not persuaded. The invited-error doctrine prevents a party from asserting on appeal errors he invited or could have prevented in the district court. *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012). But the doctrine does not apply to error that meets the plain-error test. *Id.*

Finally, the state argues that the district court’s error did not affect Sindt’s substantial rights. We disagree. Our supreme court has held that an instruction that tells the jury that deadlock is not an option is not “consistent with our concept of a fair trial.” *State v. Martin*, 297 Minn. 359, 360, 211 N.W.2d 765, 765 (1973). Accordingly, “it is reversible error in Minnesota to coerce a jury towards a unanimous verdict.” *State v. Jones*, 556 N.W.2d 903, 912 (Minn. 1996). Because the district court’s erroneous instruction to the deliberating jury is inconsistent with a fair trial and has been found to require reversal,

we conclude that Sindt's substantial rights were implicated and a new trial is needed to ensure the fairness and integrity of judicial proceedings. *Strommen*, 648 N.W.2d at 686.¹

Reversed and remanded.

¹ Sindt challenges certain evidentiary rulings that he did not object to in the district court. Because we reverse and remand for a new trial due to the erroneous jury instruction, we do not reach these issues.