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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0381**

State of Minnesota,
Respondent,

vs.

Marland Len Corr, Sr.,
Appellant.

**Filed February 26, 2018
Affirmed
Bjorkman, Judge**

Anoka County District Court
File No. 02-CR-16-5710

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction for violating an order for protection (OFP), arguing that his constitutional right to present a defense was violated when the district court

denied his requests to admit extrinsic evidence of three prior instances when the victim recanted allegations of OFP violations and domestic abuse by appellant. We affirm.

FACTS

Appellant Marland Corr and S.B. married in November 2009 and have two children. The marriage has been marked by discord and physical violence by Corr. On April 6, 2016, S.B. obtained an OFP against Corr. Three months later, the district court issued an amended OFP, which allowed Corr to pick up the children from school. But the amended OFP still prohibited Corr from coming to S.B.'s residence and only allowed him to contact S.B. in writing or at counseling appointments.

On the morning of August 30, 2016, S.B. heard her doorbell ring and a knock at her front door. She looked through the window on the door and saw Corr standing outside. S.B. told him to leave, and called the Coon Rapids Police Department when he refused to do so. Her first call was disconnected. The dispatcher called back, and S.B. stated that Corr, whom she identified as subject to an OFP, was just at her front door but was now walking away. Although S.B. told the dispatcher that she did not need police assistance, Officer Melcher was sent to the home to conduct a welfare check.

While Officer Melcher was talking with S.B., Officer Smith received information from the dispatcher that someone matching Corr's description was observed on a video camera walking on a street near S.B.'s residence. Officer Smith drove to the location and found Corr. Corr denied being at S.B.'s residence, explaining that he had been to the bank and was heading to a store to buy a cigar. Officer Smith arrested him. The next day, the state charged Corr with violating the OFP.

Before trial, Corr moved the district court to admit evidence, including an audio tape, letter, and interview transcript, under Minn. R. Evid. 616 and Minn. R. Evid. 404(b). Each item reflects a separate instance of S.B. recanting allegations of prior domestic violence committed by Corr.¹ The district court denied the motion, reasoning that the evidence of S.B.’s recantations was not intended to show bias but, rather, her propensity to lie.² Although Corr was unable to submit extrinsic evidence of S.B.’s recantations, on cross-examination he impeached S.B. with the facts underlying the excluded documents. And he was permitted to use the documents themselves to refresh S.B.’s recollection when she struggled to remember specific events, allegations, and recantations.

The jury found Corr guilty and the district court sentenced him to 27 months in prison. Corr appeals.

D E C I S I O N

In our justice system, a criminal defendant has “the right to be treated with fundamental fairness and ‘afforded a meaningful opportunity to present a complete defense.’” *State v. Richards*, 495 N.W.2d 187, 194 (Minn. 1992) (quoting *California v. Trombetta*, 467 U.S. 478, 485, 104 S. Ct. 2528, 2532 (1984)). This right allows the defendant “to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lies.” *Id.* (quoting *Washington v. Texas*, 388 U.S.

¹ S.B. has never recanted the allegations underlying the current offense.

² The district court also ruled that even if the extrinsic evidence was meant to show bias or motive, it would still be excluded because “it’s more prejudicial than probative” under Minn. R. Evid. 403.

14, 19, 87 S. Ct. 1920, 1923 (1967)). But a party seeking to present his defense must comply with the rules of evidence. *State v. Pendleton*, 706 N.W.2d 500, 510 (Minn. 2005). We review a district court's evidentiary rulings for abuse of discretion, even if a constitutional right is implicated. *Id.* It is the appellant's burden to demonstrate that the district court's evidentiary ruling constitutes abuse of discretion that was prejudicial. *Id.*

Corr argues that the district court abused its discretion when it excluded extrinsic evidence of S.B.'s recantations of prior abuse allegations. He further argues that exclusion of this evidence was prejudicial. We address each argument in turn.

Corr asserts that the documents reflecting S.B.'s recantations are admissible as extrinsic evidence under two theories. First, he argues that the evidence is admissible to establish bias because the false accusations show that S.B. "had an ulterior motive to lie to the police to get Corr in trouble and [had] a history of doing just that." We are not persuaded. Evidence of bias is admissible to attack a witness's credibility. Minn. R. Evid. 616; *see, e.g., United States v. Abel*, 469 U.S. 45, 55, 105 S. Ct. 465, 470-71 (1984) (membership in Aryan Brotherhood is probative of bias). But, as the district court observed, Corr did not offer the extrinsic evidence for this purpose. Rather, he offered the evidence to demonstrate S.B. has a propensity to lie about abuse by Corr. This is precisely the type of evidence Minn. R. Evid. 608(b) prohibits: "Specific instances of the conduct of the witness, for the purpose of attacking or supporting the witness' character for truthfulness . . . may not be proved by extrinsic evidence." A district court may, at its discretion, permit inquiry into a witness's character for truthfulness on cross-examination. Minn. R. Evid. 608(b). That is what the district court did.

Second, Corr argues that S.B.’s prior recantations are admissible as extrinsic evidence under *State v. Goldenstein*, 505 N.W.2d 332 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993). In *Goldenstein*, the defendants were accused of sexually assaulting their three foster children. 505 N.W.2d at 335. The district court excluded evidence that the children had also accused a social worker of sexually abusing them. *Id.* at 340. This court reversed and remanded, holding that evidence of prior false accusations may be admissible to attack a complainant’s credibility if the district court makes a threshold determination “that a reasonable probability of falsity exists.” *Id.*

Corr did not cite *Goldenstein* or argue that the case supports admission of extrinsic evidence of S.B.’s prior recantations in the district court.³ As a general rule, we “will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure.” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Because the pivotal question identified in *Goldenstein*—whether there is a reasonable probability that S.B.’s prior allegations of domestic abuse by Corr are false—was not presented to the district court, we decline to consider Corr’s argument.

Moreover, our review of the record persuades us that any evidentiary error occasioned by the district court’s exclusion of extrinsic evidence of S.B.’s prior recantations is harmless. *See State v. Cram*, 718 N.W.2d 898, 904 (Minn. 2006) (stating that even if the district court abuses its discretion, “the decision will not be reversed if it is found to be harmless beyond a reasonable doubt” (quotation omitted)). Error regarding the

³ Rather, Corr argued at various times that the extrinsic evidence was admissible under Minn. R. Evid. 404(b) and Minn. R. Evid. 616, and not excluded by Minn. R. Evid. 608(b).

exclusion of evidence is harmless if the verdict is “surely unattributable to the error.” *State v. Richardson*, 670 N.W.2d 267, 279 (Minn. 2003) (quotation omitted).

The record is replete with evidence supporting the jury’s finding that Corr violated the OFP. In addition to S.B.’s testimony concerning the violation, the evidence included her 911 call, testimony of the officers who responded to her call and contemporaneously located Corr on a street adjacent to S.B.’s home, and photographs showing where Corr was picked up by Officer Smith in relation to S.B.’s home. And the record includes testimony from three different officers and S.B. regarding Corr’s past domestic abuse against S.B., which Corr does not challenge on appeal.

Corr contends that the length of the deliberations, the jury’s question about the excluded exhibits, and the fact the jury wanted the 911 tape replayed means that the jury wavered in determining Corr’s guilt. This argument is mere speculation. And his assertion that defense counsel’s repeated impeachment of S.B. on cross-examination was not sufficient because S.B. did not recall her prior recantations is belied by the record. While S.B. did not remember the specifics of certain past incidents of abuse, defense counsel used the excluded documents to refresh her memory. After reviewing each document, S.B. testified that her recantations were false.

In sum, we discern no abuse of discretion by the district court in excluding extrinsic evidence of S.B.’s recantations of prior abuse allegations. And because ample evidence supports the jury’s verdict, and defense counsel impeached S.B. with her prior recantations during cross-examination, any claimed evidentiary error was harmless.

Affirmed.