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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1081**

State of Minnesota,
Respondent,

vs.

Octavius Tobias Riddley,
Appellant.

**Filed May 7, 2018
Affirmed
Rodenberg, Judge**

Hennepin County District Court
File No. 27-CR-15-10422

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, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Octavius Tobias Riddley argues on appeal that his conviction for first-degree criminal sexual conduct should be reversed because the district court erred in its evidentiary rulings at trial. We affirm.

FACTS

Appellant was married to T.S. from 2006 to 2009. After their divorce, appellant and T.S. rekindled their relationship. Their revived relationship saw appellant abuse and threaten T.S., based on accusations that she cheated on him. T.S. obtained an order for protection against appellant. The order notwithstanding, T.S. and appellant remained in contact with one another; and appellant continued to threaten T.S.

On April 19, 2015, appellant told T.S. that he had money to give her for their son's care. T.S. agreed to meet with appellant. She drove to appellant's mother's house, and appellant got into her car. Appellant hit and threatened T.S. in the car, according to T.S.'s trial testimony. Appellant demanded that T.S. drive him to a hotel. He told T.S. to go into the hotel and get a room in her name, and he threatened to hurt her if she did not do what he said. She got a room as directed, and the two checked in around 1:30 a.m. When appellant and T.S. entered the hotel room, appellant immediately began hitting T.S., threw a boot at her, and burned her with cigarettes. Appellant also took T.S.'s phone and accused her of having sex with various people from her Facebook page.

After a while, appellant told T.S. to take off her skirt and underwear and to bend over the bed. T.S. told appellant that she did not want to have sex with him, but appellant

said that he was going to do so anyway and used his penis to penetrate T.S. vaginally, anally, and orally over a four-hour period. Eventually, appellant sent T.S. out of the room to purchase beverages, but she instead went to the front desk and asked the attendant to call the police. Appellant was arrested and charged with one count of first-degree criminal sexual conduct and one count of kidnapping.

Before trial, defense counsel stated an intention to question T.S. about a letter she had previously sent to police indicating that she had fabricated allegations against appellant in a different matter in 2013. The district court stated that the defense was “certainly entitled to go down that road,” but that T.S. must be given an opportunity to explain the letter if she is cross-examined about it.

Appellant’s attorneys also indicated that they planned to have other women testify about things that T.S. said to them about appellant, such as: “Stay the f--k away from my husband, or I’ll kill you, b---h” and “if she, [T.S.], can’t have Octavius . . . then nobody will.” Additionally, appellant planned to have these women testify that T.S. stalked them and vandalized their and appellant’s vehicles. The defense stated that these instances would be offered as relationship evidence, as evidence of bias and jealousy, and as prior false statements. Appellant’s attorney stated that this evidence would show T.S.’s “motivation to fabricate or exaggerate” the conduct underlying the charges against appellant. The state opposed the admission of any of this extrinsic evidence, arguing that it constitutes character evidence and is therefore inadmissible. The district court characterized the evidence as extrinsic, and ruled that “asking the witness questions about her bias, cross-examining her regarding bias, motive to lie, fabrication, . . . [and] her

veracity” were all “fair grounds for cross-examination.” The district court initially reserved ruling on whether the extrinsic evidence would be admitted. Before cross-examination of T.S., the district court repeated that it would allow cross-examination concerning the identified prior incidents, but “[a]s far as offering up extrinsic or other evidence, you’re at this time stuck with the answer [T.S. gives] unless I see anything to change my position.” The district court noted that it did not see a connection between the identified incidents and T.S.’s possible bias against appellant.

Appellant’s attorney asked T.S. on cross-examination if she recalled telling a Minneapolis police officer in April 2013 that appellant had never physically or sexually abused her before then. T.S. denied saying that, and testified that she would not have said that because it was not true. T.S. acknowledged sending a handwritten letter to appellant’s parole agent in August 2013 stating that “all of the accusations [she had] made against [appellant] are false” and that she had accused him of assaulting her “to get him in trouble and sent to jail because [she] was very hurt that he had begun a relationship with another woman.” Appellant’s attorney asked T.S. if she confronted another woman whom appellant had been seeing in 2013, and T.S. responded that she never knocked on the door or spoke to the woman. T.S. also denied saying “stay the f--k away from my husband or I’ll kill you, b---h” and denied having said that if she could not have appellant, then no one could.

When appellant’s attorney indicated an intent to have a witness testify that T.S. had previously crashed her car into the witness’s car, the district court ruled that it would not permit such questioning because it was collateral and extrinsic evidence. The district court

also ruled as inadmissible any testimony concerning T.S.’s alleged text messaging that if she could not have appellant, then no one could. The district court noted that these alleged text messages post-dated T.S.’s allegations against appellant and therefore did not tend to show that T.S. had fabricated the allegations against appellant.

A jury found appellant guilty of the criminal-sexual-conduct charge and not guilty of the kidnapping charge. Appellant moved for a new trial based on, among other things, the district court’s evidentiary rulings.¹ The district court denied that motion and sentenced appellant to 360 months in prison.

This appeal followed.

D E C I S I O N

I. The district court did not abuse its discretion by excluding extrinsic evidence of T.S.’s prior statements and acts.

Appellant argues that the district court erred by excluding extrinsic evidence of T.S.’s 2013 statements to a police officer and to other women associated with appellant.

“Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted). This standard of review applies even when “the defendant claims that the exclusion of evidence

¹ In his motion for a new trial, appellant also challenged the district court’s refusal to instruct the jury on a lesser-included assault charge and requested a *Schwartz* hearing to examine possible interference with the jury. Appellant raises only the evidentiary issue in this appeal.

deprived him of his constitutional right to a meaningful opportunity to present a complete defense.” *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017).

Appellant sought to introduce evidence, through testimony from witnesses other than T.S., that T.S.: (1) told a police officer in April 2013 that appellant had never physically or sexually abused her before then, a statement T.S. denied having made; (2) told a police officer in April 2013 that she knocked on the door of a house owned by M.C., who T.S. believed had been seeing appellant; (3) said “stay the f--k away from my husband or I’ll kill you, b---h” to M.C.; and (4) sent another woman a text message that if T.S. could not have appellant, then nobody would.

When defense counsel sought to call a police officer to impeach T.S.’s testimony on points (1) and (2), above, the district court called a recess to consider the matter. The record shows no ruling by the district court on the issue, and appellant’s attorney made no further effort to call or question the officer. We do not review issues that were not decided by the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Although appellant argues on appeal that he should have been allowed to call M.C. to testify about T.S. telling her to stay away from appellant (point (3), above), M.C. was never called as a witness, and the record reveals no ruling by the district court concerning M.C.’s testimony. Because appellant made no record of an attempt to call these witnesses and the district court did not exclude the testimony, appellant has failed to preserve this argument by presenting it to the

district court. Therefore, we review only the district court's exclusion of T.S.'s alleged statement that no one else could have appellant if she could not.²

Appellant sought to introduce T.S.'s statement that "if she, [T.S.], can't have [appellant] . . . then nobody will" as evidence of bias. T.S. denied saying it when she was cross-examined, and appellant sought to present testimony from the woman to whom T.S. allegedly sent this text message. The district court sustained the state's objection to this testimony.

² Appellant's trial counsel made several references during trial to an intention to elicit testimony about statements made by T.S. to a police officer and to M.C. The district court each time questioned appellant's trial counsel about the purpose of such testimony. Ultimately, appellant did not call either the police officer or M.C. to testify at trial. Despite appellant's argument on appeal, appellant's briefing does not identify where in the record the district court ruled that these two witnesses could not testify or that their testimony would be limited to specific things. Appellant moved for a new trial, indicating that he "tried to introduce evidence" that was "largely held to be inadmissible 'extrinsic evidence,'" apparently referring to the intended testimony of a police officer and M.C. concerning T.S.'s out-of-court statements. But appellant did not identify in either his written motion or at the motion hearing where in the record the district court limited or prohibited such evidence. We generally will not consider issues that were not decided by the district court. *Roby*, 547 N.W.2d at 357. And because appellant did not properly preserve the issues related to the police officer's and M.C.'s proposed testimony, we would, at most, review for plain error. *State v. Melanson*, 906 N.W.2d 561, 566 (Minn. App. 2018). "Plain error exists when the district court commits an obvious error" that is prejudicial and affects the outcome of the case. *Melanson*, 906 N.W.2d at 566 (citations omitted). But appellant's briefing on appeal does not argue plain error. Even if we were to review the purported exclusion of the police officer's and M.C.'s testimony, and even if we were to assume that the district court erroneously prohibited the introduction of these purported out-of-court statements by T.S., appellant would still not be entitled to reversal. For the same reasons given below, the outcome of the case would not have been any different. See *Infra*, Section II, p. 11-12. The state presented such overwhelming evidence of appellant's guilt that the jury would surely not have reached a different conclusion had it learned of these marginally relevant and temporally remote out-of-court statements by T.S.

Evidence of bias is admissible to impeach the credibility of a testifying witness. Minn. R. Evid. 616. “Moreover, extrinsic evidence of . . . misconduct may be admitted to show that a witness is motivated by bias.” *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995). Such evidence is used to show why the witness “might change her story” to favor one party over the other. *State v. Copeland*, 656 N.W.2d 599, 603 (Minn. App. 2003). Even though extrinsic evidence may be used to show bias, “not everything tends to show bias, and courts may exclude evidence that is only marginally useful for this purpose.” *State v. Larson*, 787 N.W.2d 592, 599 (Minn. 2010) (quoting *Lanz-Terry*, 535 N.W.2d at 640). When assessing the district court’s restriction of cross-examination, a reviewing court must differentiate between “general credibility attacks and attacks on a witness’s testimony designed to reveal bias.” *Lanz-Terry*, 535 N.W.2d at 640.

A defendant has a constitutional right to cross-examine a witness testifying against him for bias. *Id.* at 641. But “the extent to which extraneous matters are permitted into a criminal case . . . rests largely in the discretion of the trial court.” *Id.* The district court “may exclude evidence of extraneous matters based on concerns about such things as harassment, decision making on an improper basis, confusion of the issues, and cross-examination that is repetitive or only marginally relevant.” *Id.* While the “general rule [is] that all evidence which may tend to impeach a witness is relevant,” in “instances . . . where the probative value of the impeachment evidence may be outweighed by its tendency to prejudice or confuse the jury,” the district court has the discretion to exclude it. *State v. Underwood*, 281 N.W.2d 337, 341 (Minn. 1979).

Appellant cites to *Copeland*, *Lanz-Terry*, and *State v. Pride*, 528 N.W.2d 862 (Minn. 1995), in his brief, but clarifies in his reply brief that these cases were cited “solely for the purpose of defining what constitutes ‘bias’ evidence.” While *Pride* and *Lanz-Terry* do set out rule statements concerning impeachment with bias evidence, both cases discuss the extent to which a defendant may cross-examine a witness on collateral matters under the Confrontation Clause. Neither case concerns the use of extrinsic evidence under Minn. R. Evid. 616. *Pride*, 528 N.W.2d at 865-67; *Lanz-Terry*, 535 N.W.2d at 639-41. Here, appellant’s trial counsel was permitted to cross-examine T.S. concerning her interactions with the other women. The district court warned counsel that he would be “stuck” with the answers given by T.S. This limitation was within the district court’s discretion. *Lanz-Terry*, 535 N.W.2d at 640.

In other cases cited by appellant, courts have allowed extrinsic evidence of bias to attack the credibility of a witness when the evidence showed prior interactions between the witness and the defendant. For example, in *State v. Waddell*, the supreme court upheld the admission of extrinsic evidence in the form of testimony from the defendant’s girlfriend and her roommate that the defendant had previously raped the girlfriend and that the girlfriend was afraid of what the defendant would do if she reported it. 308 N.W.2d 303, 304 (Minn. 1981). The supreme court reasoned that the district court did not abuse its discretion in admitting this extrinsic evidence because the girlfriend’s sexual relationship with and fear of the defendant showed that she may be biased to testify in the defendant’s favor. *Id.* Likewise, in *Copeland*, we found that extrinsic evidence of the defendant’s prior assaultive behavior toward the victim, who recanted her claims during her trial testimony,

was admissible “to demonstrate [the victim’s] bias in favor of [the defendant] due to her fear of him.” 656 N.W.2d at 603. Both of these cases involved extrinsic evidence of the witness’s relationship to or interactions with the person toward whom the bias was alleged, not some third party.

Here, the district court, having allowed appellant to cross-examine T.S. about these marginally relevant matters, was concerned that allowing appellant to call a witness to counter T.S.’s answer would result in a “trial within a trial.” The resulting focus would be on T.S.’s relationship with the other women and not on whether appellant committed the charged offenses. As the district court aptly noted, it is “unclear” how T.S.’s interactions with other women would relate to the beating and rape that she reported to the police. The district court found that the alleged interactions between T.S. and the other women were “tangential, collateral, and unrelated to the charges for which Defendant was on trial.” The district court found that the offered evidence only bore on T.S.’s credibility and that extrinsic evidence was not admissible for that purpose.

“[I]mpeachment evidence, like substantive evidence, is subject to the requirements of Minn. R. Evid. 403,” and “the district court has broad discretion when deciding whether to exclude impeachment evidence under Rule 403.” *Doe 136 v. Liebsch*, 872 N.W.2d 875, 883 (Minn. 2015) (citations omitted). The district court, implicitly determining that the proffered testimony to dispute whether T.S. sent a text message about whether she or another woman could “have” appellant was not relevant to the issues in the trial, did not abuse its discretion.

II. Even if the district court abused its discretion, any error was harmless beyond a reasonable doubt.

Even if the district court abused its discretion, which we do not conclude that it did, appellant would be entitled to a new trial only if he also demonstrated prejudice. We review erroneous evidentiary rulings for harmless error in cases where a defendant “contends that his constitutional rights have been violated.” *State v. Quick*, 659 N.W.2d 701, 713 (Minn. 2003). An evidentiary error asserted to violate a defendant’s constitutional rights is reviewed to determine whether it is harmless beyond a reasonable doubt; in other words, “the jury’s verdict must be surely unattributable to the error.” *State v. Lilienthal*, 889 N.W.2d 780, 787 (Minn. 2017) (quotation omitted). “[I]f the evidence had been admitted and the damaging potential of the evidence fully realized, we must be satisfied beyond a reasonable doubt that a jury would have reached the same verdict” in order to find the error harmless. *Quick*, 659 N.W.2d at 716.

We are satisfied beyond any reasonable doubt that the jury would have reached the same verdict even if the challenged evidence had been admitted. The evidence against appellant at trial was overwhelming. T.S. testified at length about the threats, beating, and multiple instances of sexual penetration that appellant forced her to endure. The desk clerk from the hotel testified that T.S. was scared and bleeding when she asked him to call 911, and that T.S. told him that her boyfriend had beat her and burned her with a cigarette, all of which is consistent with T.S.’s trial testimony. The responding police officer also testified that T.S. was “visibly shaking, crying, had a split upper lip, dried blood around her mouth, and blood on her dress.” T.S. described the beating and sexual assaults in detail

to the officer after she was taken to the hospital. This description was again consistent with T.S.'s trial testimony. A nurse also testified that T.S. described how appellant sexually assaulted her. The nurse described in detail the injuries that T.S. suffered and testified that her injuries were consistent with the reported sexual assault.

Moreover, appellant was permitted to cross-examine T.S. about all of the prior acts of jealousy and prior inconsistent statements concerning which appellant now argues. But the district court did not permit appellant to call a woman to dispute whether T.S. sent one text message. After extensively cross-examining T.S. about these prior statements and acts of jealousy, appellant's trial counsel argued to the jury in summation that the sexual conduct in the hotel room was consensual and that T.S., motivated by jealousy, had lied to get appellant in trouble. Appellant presented his theory of the case—that T.S. fabricated the sexual-offense accusations against him out of jealousy—during cross-examination and in closing argument. The jury rejected it.

On this record, it is implausible to think that the jury's verdict would have been different had the district court's evidentiary rulings on these tangential matters been different. The state's evidence against appellant was overwhelming and appellant had the opportunity to present and argue his theory of the case to the jury at trial. The jury's verdict is surely unattributable to the district court's evidentiary rulings. Even if the district court abused its discretion by excluding the extrinsic evidence proffered by appellant, any error was harmless beyond a reasonable doubt. *Lilienthal*, 889 N.W.2d at 787.

Affirmed.