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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1550**

State of Minnesota,
Respondent,

vs.

Mohammad Bilal Chughtai,
Appellant.

**Filed June 25, 2018
Affirmed
Smith, Tracy M., Judge**

Blue Earth County District Court
File No. 07-CR-17-886

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

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Smith, Tracy M., Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Mohammad Bilal Chughtai challenges his conviction of stalking, arguing that the evidence was insufficient to prove that he knew or had reason to know that his

conduct would cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated. Chughtai also challenges his conviction of violating a domestic-abuse no-contact order (DANCO), arguing that the district court committed plain error by allowing references to the term “domestic abuse” at trial. Finally, Chughtai argues that the district court erred in entering the DANCO-violation conviction because both the stalking and the DANCO violation arose from a single behavioral incident. We affirm.

FACTS

In October 2016, a DANCO was issued against Chughtai, prohibiting him from contacting his ex-wife, H.B., in any way. Five months later, Chughtai and H.B. coincidentally had appointments at approximately the same time at the same clinic. At the clinic, Chughtai, knowing that the DANCO was in effect, called H.B.’s name, followed H.B. to the staircase as she moved to go from the second floor downstairs to the lab, initially blocked H.B. from going down the stairs, then followed H.B. to the lab, grabbed her by the arm, and spoke to her. While H.B. checked in with the lab receptionist, Chughtai remained within about 15 feet of H.B. H.B. called the police. Chughtai had two previous domestic-violence-related convictions within the past ten years.

The state initially charged Chughtai with two counts of stalking, in violation of Minn. Stat. § 609.749, subds. 4(b), 5(a) (2016), and one count of violating a DANCO, in violation of Minn. Stat. § 629.75, subd. 2(d)(1) (2016), but eventually dropped one of the stalking charges. Chughtai pleaded not guilty and requested a jury trial.

At a pretrial hearing, the parties stipulated to the existence of two previous domestic-violence-related convictions. The jury found Chughtai guilty of both stalking

and violating the DANCO. The penalties for both counts were enhanced to felony levels based on the previous domestic-violence-related convictions. The district court held a sentencing hearing and adjudicated Chughtai guilty on both counts and sentenced him on the most serious offense of stalking.

Chughtai appeals.

D E C I S I O N

I. Sufficient evidence supports Chughtai’s conviction of stalking.

Chughtai argues that the evidence was insufficient to prove that he knew or should have known that his conduct would cause the victim to feel frightened or intimidated. To prove stalking, the state must show, among other things, that “the actor knows or has reason to know” that his conduct “would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated.” Minn. Stat. § 609.749, subd. 1 (2016). The state does not have to prove specific intent. *Id.*, subd. 1a (2016) (“[T]he state is not required to prove that the actor intended to cause the victim to feel frightened, threatened, oppressed, persecuted, or intimidated . . .”).

In considering a claim of insufficient evidence, an appellate court’s review “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. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This assumption “is particularly appropriate when resolution of the case depends on conflicting

testimony, as it is the function of the jury to evaluate the credibility of the witnesses.” *State v. Pippitt*, 645 N.W.2d 87, 92 (Minn. 2002). The reviewing court “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

When viewed in the light most favorable to the conviction, the evidence showed the following: A valid DANCO has prohibited Chughtai from contacting H.B. since 2016. On March 8, 2017, unbeknownst to each other, H.B. and Chughtai both had appointments scheduled at the same clinic around 8:00 a.m. When checking in at the front desk on the first floor, H.B. noticed Chughtai standing in the line. H.B. and Chughtai did not communicate with each other at that time. H.B. went to the second floor after checking in and sat on a chair. Chughtai also went to the second floor and, after noticing H.B., sat on a chair at another area. This action did not cause H.B. any concern.

H.B. was instructed by the clinic personnel to go to the basement for some lab work. When H.B. was going to the stairs, Chughtai called her name, stood up from the chair, and went toward her. Chughtai then stood in front of H.B., asking her to forgive him and to give him a minute, with his hands clasped in a prayer-like manner. H.B. felt frightened. Chughtai initially blocked H.B. from going down the stairs, but she was able to use other people as a shield to move around Chughtai. Chughtai followed H.B. to the first floor, asked H.B. to sit down with him so that they could talk, and grabbed her arm in a nonaggressive way to try to direct her to a seat. H.B. threw her arm out to break Chughtai’s

grip and continued walking downstairs to the basement, again using other people as a shield. Chughtai followed H.B. to the basement, calling her name repeatedly.

After H.B. got to the reception area at the basement, she took out her phone and called the police, while Chughtai was standing about 15 feet behind her. H.B. later entered into the lab area, and Chughtai wanted to follow her. One of the receptionists asked H.B. whether she and Chughtai were together. Because she was on the phone with the police, H.B. swung her finger back and forth indicating that Chughtai was not with her, and, as a result, the receptionist did not let Chughtai enter into the lab area with H.B.

Later, the police arrived and arrested Chughtai. H.B. told the police that she felt upset and frightened and was shivering the whole time that Chughtai was with her.

Chughtai argues that the evidence was insufficient to show that he knew or had reason to know that his conduct would cause H.B. to feel frightened because his actions were nonviolent. This argument is unpersuasive. “In determining whether there is sufficient evidence . . . we examine the evidence as a whole.” *State v. Hurd*, 819 N.W.2d 591, 599 (Minn. 2012). The evidence establishes that Chughtai pursued H.B. from the second floor of the clinic to the basement, blocked her way down, grabbed her arm, called her name repeatedly, and tried to speak to her. The evidence also establishes that H.B. was trying to avoid contact with Chughtai the whole time. Importantly, Chughtai engaged in this conduct knowing, as he readily admitted, that a DANCO protected H.B. from any contact by him. This context should have given Chughtai reason to know that his actions, even if they were nonviolent, would cause H.B. to feel frightened, threatened, oppressed,

persecuted, or intimidated. The evidence was sufficient to support Chughtai's conviction of stalking.

II. The district court did not commit plain error with respect to the DANCO-violation conviction by allowing the state to use the term "domestic abuse" or by including the term in the jury instructions.

Chughtai argues that the district court committed plain error with respect to the DANCO-violation conviction by allowing the state to refer to the DANCO as a "domestic-abuse no-contact order" at trial and to introduce the DANCO without redacting it to remove the reference to "criminal domestic abuse" at the top. Chughtai also argues that the district court committed plain error by including the term "domestic abuse" in the jury instructions.

Chughtai did not object at trial to the use of the term "domestic abuse." "Ordinarily, the defendant's failure to object to an error at trial forfeits appellate consideration of the issue." *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). In the absence of an objection, an appellate court may review an issue first raised on appeal for plain error. Minn. R. Crim. P. 31.02; *State v. Pearson*, 775 N.W.2d 155, 161 (Minn. 2009). The plain-error standard "requires the defendant to show (1) error (2) that was plain and (3) that affected the defendant's substantial rights." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). The party asserting plain error has the burden of establishing all three elements. *State v. Hollins*, 765 N.W.2d 125, 131 (Minn. App. 2009). "If these three prongs are met, the court must then decide whether it should address the issue in order to ensure fairness and the integrity of the judicial proceedings." *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001) (quotation omitted). An appellate court may exercise its discretion to correct an unobjected-to error only after all three plain-error elements are satisfied. *Id.*

“Under the plain-error doctrine, an error is a deviation from a legal rule unless the rule has been waived.” *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014) (quotation omitted). In the context of jury instructions, a district court has broad discretion. *State v. Anderson*, 789 N.W.2d 227, 239 (Minn. 2010). A district court abuses that discretion if its jury instructions “confuse, mislead, or materially misstate the law.” *State v. Vang*, 774 N.W.2d 566, 581 (Minn. 2009). A district court’s instructions “must be read as a whole to determine whether they accurately describe the law.” *Id.*

Chughtai argues that it was an error to use the term “domestic abuse” because the term “injected prejudice and speculation into the trial.” This argument is unpersuasive. Chughtai was charged and convicted under Minn. Stat. § 629.75, subd. 2(d)(1), which contains the term “domestic abuse” as part of the statutory language. Minn. Stat. § 629.75 (2016). Chughtai has provided no authority to support his position that it is an error for the state to use the statutory language for the offense or for the district court to include the statutory language in the jury instructions. Therefore, we conclude that it was not an error to allow the state to use the term “domestic abuse” at trial or to include it in the jury instructions.

Because Chughtai does not meet his burden to show error, we do not address the remaining plain-error elements. *See Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011) (stating that if an appellate court finds that any one of the plain-error elements is not satisfied, it does not need to address any of the others).

III. The district court did not err by convicting Chughtai of both offenses.

Chughtai argues that the district court erred in entering both the stalking and the DANCO-violation convictions because they arose from the same behavioral incident.

The district court, in imposing two convictions but only one sentence, relied on Minn. Stat. § 609.035, subd. 1 (2016). Section 609.035 applies “if the multiple offenses arose out of a single behavioral incident.” *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995). Under this section, “[m]ultiple punishment refers not to convictions but sentences and any multiple sentences, including concurrent sentences, are barred if the statute applies.” *State v. Scott*, 298 N.W.2d 67, 68 (Minn. 1980). As a result, section 609.035 “allows multiple convictions for different [offenses] arising out of a single behavioral incident.” *State v. Papadakis*, 643 N.W.2d 349, 357 (Minn. App. 2002) (quotation omitted).

“Whether the offenses were part of a single behavioral incident is a mixed question of law and fact, so [an appellate court] review[s] the district court’s findings of fact for clear error and its application of the law to those facts de novo.” *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). “[T]he district court’s determination of whether multiple offenses constitute a single behavioral incident is a factual determination” that will not be disturbed “unless clearly erroneous.” *State v. O’Meara*, 755 N.W.2d 29, 37 (Minn. App. 2008). When the facts are not in dispute, the district court’s decision of whether an offense is subject to multiple sentences is a question of law that is reviewed de novo. *State v. Ferguson*, 808 N.W.2d 586, 590 (Minn. 2012).

At the sentencing hearing, the district court concluded, and the parties agreed, that both offenses arose from a single behavioral incident. The state does not argue otherwise on appeal. “Under section 609.035, the factors to be considered in determining whether multiple offenses constitute a single behavioral act are time, place, and whether the offenses were motivated by a desire to obtain a single criminal objective.” *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). Applying these factors, we agree that the two offenses were committed as part of a single behavioral incident. Therefore, the district court, by imposing only one sentence, correctly applied section 609.035.

Chughtai contends, however, that, because both offenses arose from a single behavioral incident, his DANCO-violation conviction is prohibited by section 609.04. Chughtai’s reliance on section 609.04 is misplaced. Section 609.04 prohibits convictions of both the crime charged and an included offense, and lists five situations in which an offense will be deemed an included offense. Minn. Stat. § 609.04, subd. 1 (2016). Chughtai does not argue that a DANCO violation is an included offense of stalking. Therefore, section 609.04 does not apply here.

Likewise, Chughtai’s reliance on several section 609.04 cases from the Minnesota Supreme Court is misplaced. Chughtai relies heavily on *State v. Bertsch*, 707 N.W.2d 660 (Minn. 2006). In *Bertsch*, the supreme court addressed whether an offense and an included offense under section 609.04 were nonetheless subject to separate convictions because they constituted separate criminal acts. *Id.* at 664. To analyze that issue, the court analogized to section 609.035’s single-behavioral-incident inquiry. *Id.* But *Bertsch* involved an included offense, and Chughtai cites no authority for the proposition that section 609.04

prohibits a separate conviction of an offense that arose from the same behavioral incident as another offense but is not an included offense. For the same reason, Chughtai's citation to *State v. Pflepsen* is not persuasive. 590 N.W.2d 759, 765-66 (Minn. 1999) (vacating convictions of included offenses).

Chughtai cites another case, which holds that a defendant cannot be convicted twice of the same offense based on the same act. See *State v. Hodges*, 386 N.W.2d 709, 710-11 (Minn. 1986) (concluding that section 609.04 bars a defendant from being convicted of three burglaries based on his single unlawful entry into one dwelling). But Chughtai has been convicted of two different offenses—not the same offense twice.

Chughtai thus fails to establish that the district court erred in entering separate convictions of stalking and violating a DANCO.

Affirmed.