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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1017**

State of Minnesota,
Respondent,

vs.

Edward Ortiz Sanchez,
Appellant.

**Filed May 20, 2019
Affirmed
Slieter, Judge**

Dakota County District Court
File No. 19HA-CR-18-69

Keith Ellison, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Torrie J. Schneider, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Kalitowski,
Judge.*

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

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Edward Ortiz Sanchez challenges his conviction of violating a domestic-abuse no-contact order (DANCO) pursuant to Minn. Stat. § 629.75, subd. 2(d)(1) (2016). Appellant argues the district court committed reversible error by denying his request to redact prejudicial information contained in the DANCO submitted to the jury as evidence. We affirm.

FACTS

On September 14, 2017, a Ramsey County District Court issued a probationary DANCO prohibiting appellant from (1) contacting E.O. directly, indirectly, or through others; and (2) going to her residence. On January 7, 2018, at approximately 7:00 p.m., E.O., while at her residence, observed appellant banging on her bedroom window and wearing a black Columbia coat. E.O. took the parties' children into the bathroom and called police. Law enforcement arrived and observed appellant covered by a jacket sitting with his legs crossed in the trunk of E.O.'s SUV, which was parked across the street from her residence. Law enforcement found appellant wearing a black Columbia coat when they took him into custody. The state charged appellant with violation of the DANCO pursuant to Minn. Stat. § 629.75, subd. 2(d)(1).¹

¹ The original complaint also included a charge for controlled-substance crime in the fifth degree (possession) in violation of Minn. Stat. § 152.025, subd. 2(1) (2016). The state dismissed this count before trial began.

Prior to trial beginning, appellant stipulated to: (1) the existence of two prior domestic-related convictions,² (2) his knowledge of the DANCO, and (3) the fact that he was served with the DANCO. The district court noted appellant's stipulation, which meant the DANCO would not be presented to the jury.

During trial, appellant's defense theory was that he had not violated the DANCO because he was not at the prohibited residence but was parked across the street to pick up his children, which the DANCO did not restrict. Upon learning of appellant's defense theory, the state requested the court reconsider the DANCO stipulation and allow presentation to the jury of the DANCO because the state needed to show there was no provision in the DANCO permitting appellant's presence to pick up his children at the residence. Appellant's counsel objected to the admission of the DANCO because it contained prejudicial information. The district court initially agreed to redact portions of the DANCO and allow the redacted version to be presented to the jury; but after the state identified the DANCO as a certified copy, the district court determined it could not redact the DANCO, and that it would be presented to the jury without redaction. The state later offered the DANCO into evidence before resting its case-in-chief. Appellant's counsel renewed the objection to the DANCO, which the district court overruled.

Appellant testified in his defense. Appellant admitted he did not comply with law-enforcement instructions and he lied to law enforcement about his name because of an active warrant in an unrelated case. Appellant denied going to E.O.'s residence.

² The state provided the court certified copies of appellant's prior convictions as exhibits, but the jury did not receive the copies as evidence because of the stipulation.

The jury found appellant guilty of the DANCO violation. The district court convicted appellant and sentenced him to an executed 26-month prison sentence with credit for 82 days served.

This appeal follows.

D E C I S I O N

Did the district court abuse its discretion by admitting an unredacted certified copy of the DANCO?

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted). A district court’s abuse of discretion by admitting evidence does not justify a new trial unless the admission was harmful. *State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016). To address harmless error properly when a constitutional right is not implicated, the reviewing court considers “whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Goelz*, 743 N.W.2d 249, 256 (Minn. 2007) (quotation omitted).

Appellant asserts the district court erred by admitting the unredacted DANCO because the DANCO included prejudicial information. Relevant evidence constitutes information “having 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. Any relevant evidence is generally admissible unless

a particular limitation applies. Minn. R. Evid. 402. One particular type of evidence of concern is other crimes, wrongs, or acts. Minn. R. Evid. 404(b); *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998). Evidence cannot be introduced when its probative value is substantially outweighed by the danger of its prejudicial effect. Minn. R. Evid. 403.

Although the evidence regarding the particular terms of the DANCO are relevant, the DANCO itself may include evidence that is either not relevant or prejudicial and require exclusion. 10 *Minnesota Practice*, CRIMJIG 13.56 cmt. (2018) (“As part of the third element, it is advisable to insert the specific term(s) or condition(s) alleged to have been violated.”); *see also* Minn. Stat. § 629.75, subd. 2 (2016) (referencing elements for a DANCO violation). In this context, the district court appeared to agree with part of appellant’s trial counsel’s assertions that the DANCO included references that should be excluded. Although the district court found this language to be prejudicial, it determined it lacked the authority to redact the information because it was a certified copy.

The fact that the DANCO was a certified copy does not override the limitations imposed by relevance. *Vikse v. Flaby*, 316 N.W.2d 276, 285-86 (Minn. 1982) (recognizing that, although exhibits are admissible under the self-authentication rule, their admission is still contingent on relevance). A means to limit irrelevant evidence in a self-authenticated document may be remedied by redacting the offending information. *See State v. Noor*, 907 N.W.2d 646, 656-57 (Minn. App. 2018) (recognizing a district court erred by admitting an unredacted exhibit that contained information the defendant was entitled to exclude but the defendant failed to establish substantial rights were violated for a new trial), *review denied* (Minn. Apr. 25, 2018).

Assuming the district court erred in believing the DANCO, though certified, could not be redacted, appellant must establish “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *Goelz*, 743 N.W.2d at 256 (quotation omitted). “We have recognized that a defendant’s references to prior crimes or prior imprisonment should generally not be admitted in evidence.” *State v. Hall*, 764 N.W.2d 837, 842 (Minn. 2009). A new trial is only warranted, however, by the appellant showing prejudice caused by the error. *Id.* at 843.

Appellant testified he knew the existence of the DANCO that restricted contact between him and E.O. E.O. testified she observed appellant outside her residence on January 7, 2018, banging on her window, wearing a black Columbia coat. Later, law enforcement found appellant in E.O.’s vehicle across the street from her residence, in the vehicle’s trunk, wearing a black Columbia coat. Appellant denied being outside E.O.’s residence, stating he parked across the street to pick up his children. Law enforcement had to use non-lethal means to force appellant out of the vehicle. Even after appellant left the vehicle, he lied about his name to law enforcement. Appellant acknowledged his prior criminal record including a prior felony and a crime of dishonesty.³

Assuming, without so ruling, admission of the unredacted DANCO was improper, appellant does not establish the admission had a reasonable possibility to significantly affect the verdict. The overall facts presented at trial established a strong case for conviction. Appellant’s criminal record provided grounds for a jury to disbelieve his

³ The district court admitted appellant’s prior convictions after considering the factors provided in *State v. Jones*, 271 N.W.2d 534, 537-38 (Minn. 1978).

statements. *See generally State v. Flemino*, 721 N.W.2d 326, 328-330 (Minn. App. 2006) (recognizing crimes of dishonesty and felony convictions are issues that question a person's credibility). Nor did the state refer to the prejudicial components of the DANCO in its closing or rebuttal arguments and, instead, focused solely on the DANCO terms limiting contact between E.O. and appellant as well as referencing appellant's lack of trustworthiness based on his convictions. On this record, the unredacted DANCO did not significantly affect the verdict.

Affirmed.