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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0735**

State of Minnesota,
Respondent,

vs.

Jason Ashley Kingsley,
Appellant.

**Filed April 6, 2020
Affirmed
Connolly, Judge**

Anoka County District Court
File Nos. 02-CR-18-5049, 02-CR-18-5629, 02-CR-18-6398

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Smith,

Tracy M., Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his sentences for second-degree assault, two counts of violating an order for protection (OFP), and three counts of violating a Domestic Abuse No Contact Order (DANCO), arguing that the assault and one OFP violation were part of the same behavioral incident and that the three DANCO violations were also part of the same incident. Because the district court did not err in sentencing appellant on any of the offenses, we affirm.

FACTS

In April 2017, appellant Jason Kingsley committed acts against A.S. that resulted in his being placed on probation for a gross misdemeanor violation of interfering with a 911 call. In March 2018, an OFP was issued prohibiting appellant from any contact with A.S.

The OFP was in effect on July 29, 2018, when appellant went to A.S.'s residence. They had drinks together while she got ready to go out; they then went downtown to a club where they purchased bottle service. At the club, they got into a fight and returned in separate cabs to her residence. There, appellant slammed A.S.'s head into a wall, tore off her clothes, pinned her to the ground, punched her, choked her, and threatened to kill her by holding a knife over her. She escaped and ran to a neighbor's house.

Appellant was charged with second-degree assault and violation of an OFP with two or more prior convictions. On August 7, 2018, he committed an offense that resulted in another charge of felony violation of an OFP with two or more prior convictions.

A DANCO prohibiting appellant from any contact with A.S. was in effect on August 18, 19, and 20, 2018. On each of those dates, appellant committed offenses that resulted in his being charged with three violations of the DANCO within ten years of the first of two or more convictions. In November 2018, appellant pleaded guilty to the charges based on the offenses of July 29 and August 7, 18, 19, and 20.

In February 2019, he was sentenced for those offenses. For the July 29 offenses, he was sentenced to a 33-month commitment to prison for the second-degree assault and a concurrent 21-month prison commitment for the OFP violation; for the August 7 OFP violation he was sentenced to a one-year-and-one-day commitment to prison consecutive to the sentences for the July 29 offenses; and for the August 18, 19, and 20 DANCO violations, he was sentenced to a one-year-and-one-day commitment to prison, consecutive to the sentences for the July 29 offenses, and to two 33-month prison commitments, concurrent to the sentences for the July 29 offenses. Thus, he was committed to prison for a total of 57 months (33 + 12 + 12) and two days for all the offenses.

Appellant challenges this sentence, arguing that the district court erred in sentencing him for both the assault and the OFP violation committed on July 29 because they were part of a single behavioral incident, and for the three DANCO violations of August 18, 19, and 20, which he argues were also part of a single behavioral incident.

D E C I S I O N

Standard of Review

Multiple sentences, even if concurrent, are generally prohibited for two or more offenses that were committed as part of a single behavioral incident. *See* Minn. Stat.

§ 609.035 (2016); *see also State v. Norregaard*, 384 N.W.2d 449, 449 (Minn. 1986). Offenses are part of a single course of conduct if the offenses occurred at substantially the same time and place and were motivated by a single criminal objective. *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). “Whether . . . offenses were part of a single behavioral incident is a mixed question of law and fact, so we review 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). The state bears the burden of showing by a preponderance of evidence that the offenses in question were not part of a single behavioral incident. *Id.*

1. July 29 offenses

On July 29, an OFP prohibiting appellant from any contact with A.S. was in force. Appellant testified that, on that date:

[W]e were drinking before we left [A.S.’s] house because we were celebrating that we got back together and that . . . I did a side job that day and I made money . . . [a]nd we decided to go out to a club downtown We got bottle service there and . . . I don’t recall a lot because I was so intoxicated

Appellant answered “no” when asked if he denied that he assaulted A.S. and that it was a bad assault; he also agreed with A.S.’s statement to law enforcement that appellant threatened to kill her on a number of occasions that night and straddled her while holding a box cutter.

Appellant’s testimony shows that his intent when he went to A.S.’s residence was to celebrate their reunion and his recent earnings; his intent when he assaulted her was to harm her physically if not kill her. This does not reflect a “single criminal objective”

throughout the time he was violating the OFP by being with her that evening. Moreover, the OFP violation lasted for hours before the assault occurred, so the two violations were not at a single time, and the OFP violation occurred both at A.S.'s residence and at the downtown club, while the assault occurred only at her residence, so the violations did not occur at a single place. Absent a single time, place, and criminal objective for the two offenses, the district court did not err in sentencing appellant on both.

2. August 18-20 offenses

A DANCO prohibiting appellant's contact with A.S. was issued at the end of July. While appellant was in jail during August, he spoke with different inmates on August 18, 19, and 20 and asked each of them to contact his significant other and have that person contact A.S. on appellant's behalf. On August 18, A.S. received a message from a number ending in 2111 saying "He [appellant] just wants me to let you know that he is so ashamed and he loves you very, very much." On August 19, she received the message from a number ending in 2617, and on August 20, the message came from a number ending in 8108.

Appellant testified that, for each of these, (1) he contacted an inmate and asked him to have his wife or girlfriend text A.S. several times, (2) he received reply messages back from A.S., (3) he arranged for the second and third messages because he received reply messages to his first and second messages, and (4) he knew each contact was a violation of the DANCO. Because the three violations occurred on three different days with three different inmates, and two of them occurred as the result of a prior violation, they were not a single behavioral incident. "[T]he mere fact that [appellant] committed multiple crimes

over time for the *same* criminal objective [here, making contact with A.S. in violation of the DANCO] does not mean he committed those crimes to attain a *single* criminal objective.” *Id.* at 271. The district court did not err in sentencing appellant on the three DANCO violations of August 18, 19, and 20.

Affirmed.