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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1131**

State of Minnesota,
Respondent,

vs.

Chase Allen Holmes,
Appellant.

**Filed June 8, 2020
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge**

Pennington County District Court
File No. 57-CR-19-114

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

Seamus Duffy, Pennington County Attorney, Thief River Falls, Minnesota (for respondent)

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

Considered and decided by Segal, Chief Judge; Ross, Judge; and Cochran, Judge.

U N P U B L I S H E D O P I N I O N

SEGAL, Chief Judge

In this direct appeal from final judgment, appellant argues that his conviction of threats of violence against his mother must be reversed because the alleged threat was merely an expression of transitory anger and not a threat to commit a felony-level crime of

violence. Appellant also argues that he is entitled to a new trial on the charges of threats of violence and misdemeanor domestic assault because the district court committed reversible error by allowing the state to elicit unfairly prejudicial allegations of a prior threat appellant made against his father as relationship evidence. Lastly, appellant argues that the district court erred by entering separate convictions and sentences for threats of violence and misdemeanor domestic assault where the offenses arose from the same criminal act. We affirm in part, reverse in part, and remand.

FACTS

In February 2019, appellant Chase Allen Holmes lived with his mother, S.H., and his father, R.H., in their home in Pennington County. His parents told him he could live with them because he was having gastrointestinal health problems. Holmes sought the assistance of doctors regarding his health issues and, when his condition did not improve, he began ordering home remedies off of the internet. Holmes believed that he was suffering from intestinal parasites and hoped these remedies would cure him. He had multiple packages sent to his parents' house each week addressed in his name. S.H. opened Holmes's packages on multiple occasions. Because of this, Holmes became increasingly irritated with S.H. and their relationship became tense.

On the evening of February 4 or 5, 2019,¹ Holmes went into the kitchen and noticed that another one of his packages had been opened by S.H. He became angry when he saw

¹ Holmes states that this conversation occurred on February 5, and S.H. stated that the conversation occurred on February 4. While there is a conflict over what day it occurred, both agree that the altercation in the kitchen took place prior to the threat at issue in this case.

it had been taped back together to look like it had not been opened. He and S.H. got into an argument, during which he called her a “f-cking b-tch.” S.H. asked him what was going on, to which he replied, “You know.” They proceeded to have an argument about Holmes moving out and finding his own place. After R.H. yelled for them to stop, the argument ended and Holmes went to bed.

On the morning of February 6, 2019, S.H. was in the living room and R.H. was in the kitchen when Holmes came out of his bedroom. Holmes yelled at S.H. “you’re a f-cking c-nt!” He then walked downstairs and slammed the door to the lower-level bathroom. After a bit, Holmes came back upstairs and, according to S.H., he “stopped in the hallway and that’s when I turned to look and I made eye contact and he goes, ‘You’re f-cking dead.’ and I said, ‘Chase did you just threaten me?’ He goes, ‘You’re f-cking dead.’ And then went into his bedroom.” During the altercation, R.H. was in the kitchen and could not see what was going on in the living room. He testified that he heard Holmes say something to S.H., but could not hear what it was. He then heard S.H. say “[Holmes] are you threatening me?” S.H. then told R.H. that Holmes had threatened her and they needed to go to the police. She testified that she felt afraid of Holmes during the incident and felt that his threat was serious.

According to Holmes, he was upset with S.H. because she kept opening his mail. He admitted to calling her a “f-cking c-nt” and said he did so because she had opened another package the night before and placed a note on it. He testified that, when he went downstairs to use the bathroom, the intestinal parasites had been eliminated by the home remedies. He testified that after he returned upstairs to go back to his room, he heard his

mom “snickering” at him. He was angry because she had used that same tone when she, months prior, had shown him a video about intestinal parasites. He then turned to her and said, “They’re f-cking dead!” referencing the intestinal parasites that he stated he had just voided from his body. He testified that, when he went into his bedroom, he heard S.H. say “was that a threat?” but he did not have any further conversation with her about what was said.

The jury found Holmes guilty of one count of threats of violence under Minn. Stat. § 609.713, subd. 1 (2018), and one count of misdemeanor domestic assault under Minn. Stat. § 609.2242, subd. 1(1) (2018). The district court entered convictions for both counts and sentenced Holmes to a stay of imposition and probation on the threats-of-violence count and imposed a 90-day sentence on the misdemeanor domestic-assault count with 90 days of credit. This appeal follows.

D E C I S I O N

I. The evidence is sufficient to support Holmes’s conviction for threats of violence.

Holmes alleges that there is insufficient evidence to convict him of felony threats of violence because he said “You’re f-cking dead” in transitory anger and not as an actual threat of future violence. When addressing a sufficiency-of-the-evidence challenge, this 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). This court assumes that “the jury believes the state’s witnesses and disbelieved any

evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This court will not reverse a conviction for insufficient evidence if the jury, acting with due regard for the presumption of innocence and the necessity of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To convict Holmes for a threats-of-violence crime, the state must demonstrate that Holmes threatened, directly or indirectly, to commit a felony-level crime of violence, and acted either with a purpose to terrorize another, or in reckless disregard of the risk of causing such terror. Minn. Stat. § 609.713, subd. 1.² “Terrorize” is defined as causing “extreme fear by the use of violence or threats.” *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975). A “threat” is a declaration of an intention to injure another by some unlawful act. *Id.* at 613. “The test of whether words or phrases are harmless or threatening is the context in which they are used.” *Id.*

This court has stated that “the statement, ‘I am going to kill you,’ is objectively a threat to commit homicide, but the context may establish something else.” *State v. Bjergum*, 771 N.W.2d 53, 56 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009). “Although the context might convey an actual intent to kill, it also may indicate anger, or frustration without an intent to kill.” *Id.* “[I]t is not the purpose of the statute to authorize grave sanctions against the kind of [threat] which expresses transitory anger.” *State v.*

² The legislature recently amended the title of Minn. Stat. § 609.713 from “terroristic threats” to “threats of violence.” See 2015 Minn. Laws ch. 21, art. 1, § 109, subd. 10, at 234. The elements of the crime have not changed. See *id.* Much of the caselaw refers to “terroristic threats” instead of “threats of violence.”

Jones, 451 N.W.2d 55, 63 (Minn. App. 1990) (quotation omitted), *review denied* (Minn. Feb. 21, 1990). Holmes argues that he was expressing transitory anger and did not have the intent to threaten harm. Because the evidence of Holmes’s mental state is supported by circumstantial evidence, we apply a heightened standard of review.

A two-step analysis is applied when reviewing a conviction based on circumstantial evidence. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). The first step is identifying the circumstances proved, deferring to the fact-finder’s “acceptance of the proof of these circumstances and rejection of evidence” that conflicted with those circumstances. *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations omitted). Second, the reviewing court independently examines “the reasonableness of all inferences that might be drawn from the circumstances proved” to determine whether they are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotations omitted).

The circumstances proved are that (1) Holmes became aware at least the night before the incident that his mother had opened another of his packages; (2) Holmes and his mother got into an argument that evening during which he called her a “f-cking bitch”; (3) when Holmes came out of his bedroom in the morning he yelled at his mother, “you’re a f-cking c-nt,” then went downstairs and slammed the door to the lower-level bathroom; (4) after coming back upstairs, Holmes said to his mother, “You’re f-cking dead”; (5) Holmes repeated this statement to his mother after she asked him, “Chase, did you just threaten me?”; (6) Holmes then went into his bedroom; and (7) S.H. felt afraid and believed his threat to be serious and reported this incident immediately to the police.

This court must examine whether the circumstances surrounding Holmes's comment are consistent with a rational hypothesis of guilt, that the statement conveyed a threat of violence with a purpose to terrorize or in reckless disregard of the risk of causing such terror, and inconsistent with any reasonable hypothesis of innocence. *See State v. Hawes*, 801 N.W.2d 659, 669 (Minn. 2011). In making this assessment, "we do not review each circumstance proved in isolation. Instead, we consider whether the circumstances proved are consistent with guilt and inconsistent, *on the whole*, with any reasonable hypothesis of innocence." *Id.* (quotations and citation omitted).

Holmes's argument is that the statement was just transitory anger and that the evidence of an actual intent to commit a felony-level crime of violence was lacking. We are, however, constrained on this appeal to accept the evidence most favorable to the verdict and to ignore evidence contrary to the verdict. In order to reverse we "must find that the evidence indicates [that] he acted not out of an intent to terrorize but rather in the midst of transitory anger." *State v. Marchand*, 410 N.W.2d 912, 915 (Minn. App. 1987), *review denied* (Minn. Oct. 21, 1987). We cannot conclude that the threat here was merely transitory anger.

Holmes's anger at his mother started at least the night before the incident when he found out that she had opened another one of his packages. He called his mother a name that night and then went to bed. As he left his bedroom the next morning, he again called his mother a name and went downstairs to the bathroom. It was only after returning from the bathroom that he made the statement "You're f-cking dead." Moreover, he repeated this statement after his mother asked if he was threatening her. The jury credited S.H.'s

testimony that she felt threatened and believed the threat was serious. We would be involved in an inappropriate reweighing of the evidence if we were to conclude that Holmes's anger at his mother, which we know started the night before, carried over to the next morning and then lasted through a trip downstairs to the bathroom and back again, qualified as "short-lived" such that it is reasonable to conclude that the comment was not made with a purpose to terrorize or at least made with reckless disregard of the risk of causing such terror. We, therefore, conclude that the evidence was sufficient and affirm the conviction of threats of violence.

II. The district court did not err when it allowed relationship evidence to be used at Holmes's trial.

At trial, the state was allowed to admit evidence of a prior incident between Holmes and his parents as relationship evidence under Minn. Stat. § 634.20 (2018). The incident occurred in July 2018, when Holmes "pounded on the bathroom door [at his parents'] residence and threatened to shoot [R.H.] in the head" and said, "You don't think I'll do it, will you?" R.H. felt this threat was serious and reported it to police. Defense counsel objected to this evidence on the ground that it was unfairly prejudicial. The district court ruled that the probative value was not substantially outweighed by the danger of unfair prejudice and that it would provide a limiting instruction.

The information was used during direct examination of R.H., in the cross-examination of Holmes, and in the prosecutor's closing argument. The district court provided a limiting instruction at the beginning of the direct examination of R.H. that stated this testimony was allowed "for the limited purpose of demonstrating the nature and extent

of the relationship between [Holmes] and other family members in order to assist [the jury] in determining whether [Holmes] committed those acts with which [Holmes] is charged.” The district court also provided a limiting instruction to the jury at the end of the trial.

Holmes argues that the district court erred when it admitted evidence of this prior threat because the state was really admitting it as propensity evidence and not relationship evidence. He claims that the evidence was unfairly prejudicial because it led the jury to conclude that he “threatened his father before, so he likely did it again to his mother.”

The district court’s decision to admit relationship evidence under Minn. Stat. § 634.20 in a domestic-abuse prosecution is reviewed for an abuse of discretion. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004); *see also State v. Fraga*, 864 N.W.2d 615, 626-27 (Minn. 2015) (recognizing that *McCoy* adopted section 634.20 as rule of evidence that includes evidence of domestic conduct by the accused against family or household members other than the victim). “[A]n appellant who alleges an error in the admission of evidence that does not implicate a constitutional right must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (quotation omitted). In deciding what effect erroneously admitted evidence had on the verdict, the reviewing court considers “the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it.” *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

Evidence of another crime or act is not admissible to prove that a person acted in conformity therewith. Minn. R. Evid. 404(b)(1); *State v. Spreigl*, 139 N.W.2d 167, 169

(Minn. 1965). However, “[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible” as relationship evidence, unless it should be excluded because “the probative value is substantially outweighed by the danger of unfair prejudice” or for other reasons provided in the statute. Minn. Stat. § 634.20.

Relationship evidence is probative if it “could have assisted the jury by providing a context with which it could better judge the credibility of the principals in the relationship.” *McCoy*, 682 N.W.2d at 161. The evidence here established that Holmes and his parents had a tense relationship and he had a history of making threats toward them. Additionally, the district court provided multiple limiting instructions during the trial. Therefore, the district court did not err when it allowed relationship evidence at trial.

Holmes also argues in a pro se supplemental brief that the relationship evidence confused and misled the jury because “the police report contains plain error.” He claims that the police report lists the date of the prior threat to R.H. as July 11, 2018, instead of July 7, 2018. Because the police report was not entered into evidence at trial, and all testimony at trial identified July 7 as the date of the prior threat, there was neither plain error, nor was the jury confused or misled as a result of the alleged mistake in the police report. Therefore, we affirm the admission of relationship evidence at Holmes’s trial.

III. The district court erred by entering convictions and sentences for both threats of violence and misdemeanor domestic assault.

Holmes also argues that the district court erred by entering convictions and sentences for both threats of violence and misdemeanor domestic assault. We agree.

Upon prosecution for a crime, a person may be convicted of the crime charged or an included offense, but not both. Minn. Stat. § 609.04, subd. 1 (2018). An included offense includes “a lesser degree of the same crime” as well as “a crime necessarily proved if the crime charged were proved.” Minn. Stat. § 609.04, subd. 1(1), (4). When a defendant is convicted of more than one charge for the same act, the proper procedure for the court to follow is “to adjudicate formally and impose sentence on one count only. The remaining conviction(s) should not be formally adjudicated at this time.” *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984).

Similarly, a person whose conduct constitutes multiple punishable offenses may be punished for only one offense, except under limited circumstances not applicable here. Minn. Stat. § 609.035, subd. 1 (2018). Whether multiple offenses arose from a single behavioral incident is a mixed question of law and fact that this court reviews de novo. *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). Minnesota courts have interpreted section 609.035 as contemplating “that a defendant will be punished for the most serious of the offenses arising out of a single behavioral incident.” *State v. Kebasso*, 713 N.W.2d 317, 322 (Minn. 2006) (quotation omitted).

Here, the jury found Holmes guilty of threats of violence under Minn. Stat. § 609.713, subd. 1, and misdemeanor domestic assault under Minn. Stat. § 609.2242, subd. 1(1). The district court entered convictions and sentenced Holmes on both counts. Both charges, however, stem from the same behavioral incident—that on February 6, 2019, Holmes said, “You’re f-cking dead” to his mother—and the misdemeanor domestic assault charge is a lesser degree of the threats-of-violence charge. Under Minn. Stat. §§ 609.035,

.04, Holmes cannot be convicted of and sentenced on both charges. We, therefore, reverse and remand this case to the district court with instructions to vacate Holmes's conviction and sentence for misdemeanor domestic assault.

Affirmed in part, reversed in part, and remanded.