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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1348**

State of Minnesota,
Respondent,

vs.

Richard Lanell Adams,
Appellant.

**Filed August 10, 2020
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-17-7809

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellant seeks review of his convictions for first- and third-degree criminal sexual conduct, arguing that the district court erred in failing to provide the jury with a unanimity

instruction on “force and coercion” and “act of penetration,” and that the evidence was insufficient to support his conviction. We affirm.

FACTS

Appellant Richard Darnell Adams was charged with first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(e)(i) (2016), and third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(c) (2016). The evidence at trial showed that Adams and the victim, T.J., had known each other since 2012 and had previously engaged in consensual sexual activity, including after T.J. became paraplegic. T.J. is paralyzed from her chest down and does not have full function of her arms. Adams was aware that T.J. was paraplegic and had reduced mobility.

On March 24, 2017, T.J. and Adams made plans to “hang out” at T.J.’s apartment. When Adams arrived, they started watching pornographic videos in T.J.’s bedroom. This included an image of a man putting his fist inside a woman’s vagina. T.J. testified she told Adams she was disgusted by the image and that she would hurt him if he ever tried to do that to her. Adams claimed that he did not recall such a comment.

Adams and T.J. began to engage in sexual activity. Adams gave T.J. consensual oral sex and then began touching her genitals with his fingers. T.J. testified that this touching became “extreme” as Adams inserted more and more fingers into her vagina, up to his knuckles. According to T.J., this was uncomfortable and she repeatedly asked Adams to stop. She tried to grab his hand and push him away. Adams eventually removed his hand and performed oral sex again. T.J. testified that she did not want this and told

Adams to stop but he held her down. Then Adams had vaginal sex with her, which T.J. testified she also did not want, again telling Adams to stop and trying to push him away.

During this incident, T.J.'s son approached her bedroom door and asked if she was ok. At T.J.'s request, Adams closed the door. At some point, T.J. noticed she was bleeding from her genital area and became scared; T.J. has limited sensation in this area since becoming paraplegic and was concerned Adams had seriously injured her. She also saw blood on Adams's shirt. After the vaginal intercourse ended, Adams got T.J. peroxide to clean up the blood and left her apartment. T.J. testified that she felt betrayed by Adams and did not understand why he had hurt her. Over the next couple days she felt like she was going "a little crazy" and started pulling out her hair.

Over the weekend, T.J.'s children went to their maternal grandmother's house. T.J.'s son informed T.J.'s mother that T.J. had been crying and T.J.'s mother reached out to T.J., who told her what had happened with Adams. At her mother's urging, T.J. went to the hospital for a sexual-assault examination. During this examination, which occurred three days after the incident, T.J. recounted the encounter with Adams and was physically examined by a certified sexual-assault nurse examiner. T.J. told the nurse she had internal pain and that her vaginal area felt swollen. There was one abrasion documented on T.J.'s thigh and four genital abrasions. One of the genital abrasions was actively bleeding a very small amount at the time of examination. The nurse testified that T.J.'s genital abrasions were consistent with forcible digital penetration by someone wearing a ring and nonconsensual sex. The nurse also testified that the genital injuries she observed on T.J. would typically be painful.

A police officer was dispatched to the hospital to interview T.J. regarding the alleged sexual assault. T.J. relayed a version of events similar to what she told the nurse during her examination. Adams was later arrested and told the investigating officer that he and T.J. had engaged in oral sex, and then digital and penile penetration, and that at no point did T.J. complain of pain or seem upset. Adams reported that T.J. had started bleeding after intercourse and told the investigating officer he believed either the ring he was wearing or his large penis might have injured her. In Adams's version of events, T.J. became upset later—after the encounter ended and he had left her apartment.

At trial, Adams testified that he never put more than two fingers in T.J.'s vagina and that she never asked him to stop or indicated she was in pain or upset during the sexual activity. Part of this testimony was contrary to what Adams had previously stated in a recorded jail call, which was played for the jury, where Adams recalled inserting his “whole hand” inside the T.J., making her “tweak[] out.” During cross examination, Adams agreed that he is physically bigger than T.J. and that, throughout the sexual encounter, he was on top of her and she could not move her legs to kick him off.

During the trial, Adams moved for two separate verdict forms as to whether penetration was accomplished by force or by coercion; this request was denied by the district court. The jury found Adams guilty of first- and third-degree criminal sexual conduct. The jury also made specific *Blakely* findings including (1) T.J. is a paraplegic; (2) her physical condition impaired her ability to seek help, fight back, or escape harm; (3) Adams knew or should have known T.J. is a paraplegic; (4) Adams used force in the commission of the offense; (5) Adams used coercion in the commission of the offense; and

(6) Adams used force and coercion in the commission of the offense. Based on those findings, the district court sentenced Adams to 240 months in prison, an upward durational departure. This appeal follows.

D E C I S I O N

I. Specific unanimity instruction

Adams contends that the jury instructions deprived him of his right to a unanimous verdict. “District courts are entitled to considerable latitude when selecting language for jury instructions,” but a jury instruction cannot materially misstate the law. *State v. Carridine*, 812 N.W.2d 130, 144 (Minn. 2012). “We review jury instructions as a whole to determine whether the instructions accurately state the law in a manner that can be understood by the jury.” *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014).

Where the appellant objects at trial, as Adams did on the instruction regarding unanimity on force or coercion, we review a district court’s jury instructions for an abuse of discretion. *See State v. Huber*, 877 N.W.2d 519, 522 (Minn. 2016). Where the appellant fails to object to jury instructions at trial, as Adams failed to do regarding the instruction on the act of penetration, we may still review the jury instructions for plain error. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). When we review for plain error, we examine the instructions to see whether there was (1) error, (2) that was plain, and (3) that affected the appellant’s substantial rights. *State v. Gunderson*, 812 N.W.2d 156, 159 (Minn. App. 2012). If all three elements are met, we will reverse the district court only if the error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Kelly*, 855 N.W.2d at 274 (quotation omitted).

In this case, the district court did not give separate jury instructions for force and coercion; instead the jury was instructed that Adams could be convicted of first- and third-degree criminal sexual conduct if “[he] used force or coercion to accomplish the act.” Adams argues that, if he was convicted under a scenario where some jurors believed the state proved coercion while others believed the state proved force, this would violate his due-process rights to a unanimous verdict. Minnesota requires that in criminal trials, a jury unanimously find that the state proved each element of the offense. Minn. R. Crim. P. 2601, subd. 1(5) (2018); *State v. Pendleton*, 725 N.W.2d 717, 730-31 (Minn. 2007). “But a jury need not agree unanimously with respect to the alternative means or ways in which a crime can be committed.” *State v. Rucker*, 752 N.W.2d 538, 547 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008).

Adams cites *State v. Stempf* for the proposition that “the jury must unanimously agree on which acts the defendant committed if each act itself constitutes an element of the crime.” 627 N.W.2d 352, 355 (Minn. App. 2001). In *Stempf*, the state charged the defendant with one count of possession of a controlled substance based on allegations that he possessed substances found hours apart (1) at his workplace and (2) in a truck. *Id.* at 354. This court, noting that the “two incidents of possession did not constitute a single act” and “occurred in different places and at different times,” vacated the conviction, holding that failing to instruct the jury to specify which act was committed meant that the verdict was possibly not unanimous. *Id.* at 358-59.

In *State v. Hart*, this court observed that Minnesota’s first-degree criminal-sexual-conduct statute—Minn. Stat. § 609.342—allowed the jury to find the defendant guilty if

he caused the victim to have reasonable fear of imminent bodily harm or if he caused personal injury while using force or coercion. 477 N.W.2d 732, 738-39 (Minn. App. 1991), *review denied* (Minn. Jan. 16, 1992). The *Hart* court concluded that, despite the inability to tell which juror believed appellant guilty of which means of committing the crime, there was unanimity in that the jury found all the elements of first-degree criminal sexual conduct present on these alternative means. *Id.* Similarly, this court has also held that a defendant's right to a unanimous verdict was not violated when the jury instructions allowed the jury to convict for first-degree criminal sexual conduct where the victim either suffered personal injury or submitted due to a threat of bodily harm. *State v. Day*, 501 N.W.2d 649, 653 (Minn. App. 1993).

Pointing also to the more recent cases of *State v. Pendleton* and *State v. Lagred*, the state argues that “coercion and force” are both alternative means to meet an element of first- and third-degree criminal sexual conduct, and so no unanimity instruction was required in this case. *State v. Pendleton*, 725 N.W.2d 717, 729-30, 733 (Minn. 2017) (concluding several possible purposes outlined in kidnapping statute were alternative modes of commission of the crime and did not require specific unanimity instruction); *State v. Lagred*, 923 N.W.2d 345, 354 (Minn. App. 2019) (concluding that being armed with a dangerous weapon and inflicting bodily harm are alternative means to meet an element of aggravated robbery and therefore did not need unanimity instruction).

We agree that coercion and force are alternative means of committing one element of first- and third-degree criminal sexual conduct. Accordingly, the district court did not abuse its discretion in denying Adams's request for separate verdict forms. Moreover, we

note that on the special verdict form, the jury specifically found that Adams used *both* force and coercion to accomplish penetration, so the lack of a unanimity instruction on this issue clearly did not prejudice him.

Adams also argues that the district court erred by failing to issue, *sua sponte*, a specific unanimity instruction on which nonconsensual act of penetration he committed because the jury heard evidence of multiple separate acts. Adams argues that, unlike *Hart* and *Day*, the state presented evidence of multiple distinct acts, making this case like the situation in *Stempf*, where a unanimity instruction was required.

Citing *Dalbec* and *Infante*, the state argues that a jury is not required to have unanimity as to the facts underlying the elements of a crime and that the various acts of penetration that occurred here were all part of a single behavioral incident. In *State v. Dalbec*, this court did not require a unanimity instruction as to which specific act constituted assault as an element of the domestic-abuse charge which involved several acts of violence against the victim, all of which took place on the same day and in the same apartment. 789 N.W.2d 508, 510-11 (Minn. App. 2010), *review denied* (Minn. Dec. 22, 2010). Applying the reasoning from *Dalbec*, this court has interpreted “a single behavioral incident” to involve two actions occurring at the same place, involving the same victim, and occurring over a short period of time. *State v. Infante*, 796 N.W.2d 349, 357 (Minn. App. 2011). The *Infante* court held that the single behavioral incident did not require an instruction that the jury unanimously decide which of two physical acts constituted the crime. *Id.*

Adams's various acts of penetration during one sexual encounter can be considered the same behavioral incident and therefore, as in *Dalbec*, "the district court did not plainly err by failing to instruct the jury that it must unanimously determine which action, among several proved, supported the element of [the offense]." 789 N.W.2d at 513.

II. Sufficiency of evidence

Adams also argues that there was insufficient evidence to establish (1) that he used force or coercion to accomplish penetration or (2) that T.J.'s personal injury occurred after she revoked consent. We review a challenge to the sufficiency of the evidence by determining whether the evidence—when viewed in the light most favorable to the conviction—is sufficient to allow the fact-finder to reach a guilty verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). A verdict will not be disturbed if the fact-finder, acting with due regard for the presumption of innocence and the requirement for proof beyond a reasonable doubt, could reasonably have concluded that the defendant was guilty. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988).

Adams argues the state failed to prove penetration was accomplished by force or coercion because T.J. did not accuse him of "holding or pinning her down" in her recorded phone call with him or in her statements to the examining nurse or investigating officer, and that the incident, even according to T.J.'s version of events, was only consistent with fifth-degree sexual conduct because no force or coercion was used. Adams also argues his "actions were inconsistent with force or coercion" because he "respond[ed] to T.J.'s request" to close the bedroom door when her son came to check on her and handed her peroxide after intercourse ended to clean up the blood.

As part of first-degree criminal sexual conduct, the state was required to prove beyond a reasonable doubt that “[Adams] use[d] force or coercion to accomplish the act [of penetration].” Minn. Stat. § 609.342, subd. 1(e)(i). “Force” is defined as:

[T]he infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant . . . which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Minn. Stat. § 609.341, subd. 3 (2016). “Bodily harm” is defined as “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2016). “Coercion” is defined as:

[T]he use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will. Proof of coercion does not require proof of a specific act or threat.

Minn. Stat. § 609.341, subd. 14 (2016).

Viewed in the light most favorable to the verdict, there was sufficient evidence for the jury to conclude force and coercion were used to accomplish penetration. The documented abrasions on T.J.’s genitals were consistent with forcible penetration, as testified to by the sexual-assault nurse who conducted T.J.’s examination. The nurse also testified that this type of genital injury was typically painful and recalled T.J. complaining of internal pain and a swollen vaginal area. This was sufficient evidence of bodily harm. Moreover, T.J.’s own testimony at trial that she tried to grab Adams’s hand to “fight” him

to make him stop digitally penetrating her, that he held her down during oral sex, and that she attempted to push him away during vaginal intercourse also established force.

As to coercion, the evidence supports that Adams used his “superior size or strength” against T.J. to cause her to submit to sexual penetration. At trial, Adams agreed that during the sexual encounter he was on top of T.J., that she could not move her legs to kick him off, and that he is bigger than she is. Particularly given T.J.’s paralysis and limited motor functions, all known to Adams at the time, this was sufficient to establish coercion.

Adams also argues that state failed to prove that he caused personal injury to T.J. after she revoked consent. For first-degree criminal sexual conduct, the state needed to prove that “[Adams] cause[d] personal injury to the complainant.” Minn. Stat. § 609.342, subd. 1(e)(i). “Personal injury” is defined as “bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.” Minn. Stat. § 609.341, subd. 8 (2016).

Under the plain language of the statute, the state was required to prove only that Adams “cause[d] personal injury to the complainant.” See Minn. Stat. § 609.342, subd. 1(e)(i); see also *State v. Sollman*, 402 N.W.2d 634, 636 (Minn. App. 1987) (“[A victim’s] injuries need not necessarily be coincidental with actual sexual penetration, they need only be sufficiently related to the act to constitute ‘personal injury’ . . .”). Based on T.J.’s documented genital abrasions and the testimony from the sexual-assault nurse, as well as the testimony from T.J. herself, it is clear that T.J. sustained bodily harm sufficiently related to the nonconsensual penetration. We observe that the testimony at trial was also

sufficient to establish that T.J. suffered severe mental anguish as a result of the sexual assault.

III. Pro se claims

Adams argues that his counsel was ineffective but provides no legal support or argument for this assertion. “Claims contained in a pro se supplemental brief with ‘no argument or citation to legal authority in support of the allegations’ are deemed waived.” *State v. Palmer*, 803 N.W.2d 727, 741 (Minn. 2011) (quoting *State v. Krosch*, 642 N.W.2d 713, 719-20 (Minn. 2002)).

Adams also argues that the prosecution misstated the evidence in closing argument by stating that Adams “[p]ut his entire hand inside the alleged victim.” Adams denies ever doing this or that any witness at trial testified that he put his whole hand inside T.J. However, in a recorded jail call, which was submitted into evidence and played for the jury, Adams stated, “I put my whole hand in her pu--y. Once she felt my whole hand in her pu--y then she just kinda tweaked out.” This additional claim does not warrant relief.

Affirmed.