

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2025**

State of Minnesota,
Respondent,

vs.

Bruce Edward Canady,
Appellant.

**Filed January 19, 2021
Affirmed
Cochran, Judge**

Stearns County District Court
File No. 73-CR-18-10257

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

Janelle P. Kendall, Stearns County Attorney, Ole Tvedten, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Jesson, Presiding Judge; Cochran, Judge; and
Slieter, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Following a jury trial, appellant was convicted of (1) promoting the prostitution of
an individual, (2) receiving profits from prostitution, and (3) engaging in the sex trafficking
of an individual. On the verdict form, the jury found appellant guilty of each of the three

offenses. The jury also found that each of the offenses “involved more than one sex trafficking victim,” thereby satisfying the sentencing-enhancement provision set forth in Minn. Stat. § 609.322, subd. 1(b)(4) (2018).

In this direct appeal, appellant argues that he was denied his right to a unanimous verdict because the jury was not instructed that it had to unanimously agree on which person or persons were the additional victims when it considered whether each offense “involved more than one sex trafficking victim.” He also argues that the district court erred by allowing the state to introduce evidence that he contends was irrelevant, unfairly prejudicial, and improper propensity evidence. Because the district court did not plainly err by not providing a unanimity instruction specific to the sentencing-enhancement provision or by admitting the challenged evidence, we affirm.

FACTS

In November 2018, appellant Bruce Edward Canady was arrested and charged with two felony sex-trafficking offenses: promoting the prostitution of an individual and engaging in the sex trafficking of an individual. *See* Minn. Stat. § 609.322, subd. 1a(2), (4) (2018). In February 2019, the state amended the complaint to allege a third felony offense—receiving profits from the prostitution of an individual. *See id.*, subd. 1a(3) (2018). The amended complaint alleged that Canady’s offenses occurred between April and November 2018, and identified an adult woman, K.F.-H., as the “individual” victim under each count. For each count, the amended complaint also alleged that the statutory sentencing-enhancement factor of “more than one sex trafficking victim” was met. *See id.*, subd. 1(b)(4). To support its allegations, the complaint referenced Facebook messages

between Canady and K.F.-H. and Canady and two additional anonymous victims. The complaint also detailed Facebook messages that Canady had sent to other people in which he advertised that he had women available for prostitution.

At trial, two alleged victims testified: K.F.-H. and another woman named A.M. Both testified that Canady had driven them to prostitution appointments, received money they earned through prostitution, and set up appointments for them to have sex with men for money. The defense impeached A.M. with a prior conviction of “a crime of dishonesty.” The jury also heard testimony from D.S., who testified that she created a prostitution advertisement for a woman named J.N. at Canady’s request.

Prior to and during trial, defense counsel disputed the admissibility of numerous Facebook messages. Defense counsel objected to the admission of the Facebook messages on the following grounds: lack of foundation, hearsay, and violation of the Confrontation Clause of the United States Constitution. The district court ruled that some of the Facebook messages were inadmissible, ordered others to be redacted, and allowed others to be admitted with a cautionary instruction. Canady did not object to any of the messages on the grounds that they were irrelevant, unfairly prejudicial, or constituted propensity evidence.

Some of the admitted messages corroborated the communications that Canady had with K.F.-H., A.M., and D.S. Via the testimony of an investigator, the state also introduced Facebook messages that showed conversations between Canady and potential prostitution patrons and between Canady and others about potential patrons. In various messages, Canady advertised several additional women as available for prostitution. He sometimes

referred to women by name or nickname—“Carmen,” “April Showers”—or referred to having multiple women available at once—“got 4 hoes,” “got 2 females.”

Following trial, the district court provided its instructions to the jury. The district court instructed the jury as to each of the three counts separately and identified the elements of each count. All three counts involved conduct against an “individual.” *See* Minn. Stat. § 609.322, subd. 1a(2)-(4) (providing that a person commits a criminal offense where he “promotes the prostitution of an individual”; “receives profit, knowing or having reason to know that it is derived from the prostitution, or the promotion of the prostitution, of an individual”; or “engages in the sex trafficking of an individual”). Consistent with the parties’ agreement, the court named K.F.-H. as the “individual” included in all three counts. The district court also told the jury that it must consider each count separately. After the court stated the elements of each count, it further instructed the jury on the sentencing-enhancement factor. Specifically, the district court told the jury:

If you find the Defendant guilty, there is an additional issue that you must determine. The question will be submitted to you on the verdict form. The State has the burden of proving the additional question beyond a reasonable doubt. The question is: Did the offense involve more than one sex trafficking victim? You should answer the question yes or no. If you have a reasonable doubt as to the answer, you should answer the question no.

Toward the end of the jury instructions, the court instructed the jury that it must reach a unanimous verdict. Canady did not object to the jury instructions at trial. Nor did Canady ever propose an instruction requiring the jury to unanimously agree on the identities of the additional victim or victims under the enhancement provision.

After the district court gave the jury instructions, the parties made their closing arguments. In its closing argument, the state suggested that the jury could find that the enhancement provision was established through A.M.’s testimony, D.S.’s testimony about J.N., or through Canady’s various Facebook messages advertising “April Showers,” “Carmen,” “two females,” and “four hoes.”

The jury found Canady guilty of all three counts and found that the “more than one sex trafficking victim” sentencing-enhancement factor was met for each. The district court entered convictions for all three offenses but sentenced Canady only on the third count—engaging in the sex trafficking of an individual. Canady appeals.

DECISION

Canady argues that the district court erred by (1) failing to instruct the jury that it must unanimously agree on which person or persons were the additional victims under the “more than one sex trafficking victim” sentencing-enhancement provision of Minn. Stat. § 609.322, subd. 1(b)(4), and (2) allowing the state to introduce certain evidence about additional alleged victims, which Canady contends was irrelevant and unfairly prejudicial. We address each of these arguments in turn.

I. The district court did not plainly error when it instructed the jury on the unanimity requirement.

Canady first contends that the district court deprived him of his right to a unanimous verdict because it did not provide a specific-unanimity instruction regarding the sentencing-enhancement provision under Minn. Stat. § 609.322, subd. 1(b)(4). That provision states that a person who commits the crime of sex trafficking or soliciting,

inducing, or promoting prostitution may be subject to an enhanced sentence if “the offense involved more than one sex trafficking victim.” *Id.* At trial, the jury heard evidence about several additional alleged victims besides K.F.-H., including A.M. and other women Canady discussed in his Facebook messages—“Carmen,” “April Showers,” “4 hoes,” and “2 females.” And while the district court gave a general-unanimity instruction requiring the jury to unanimously agree on the verdict, it did not instruct the jury that it must unanimously agree regarding the identities of the additional victim or victims for each offense. Canady now argues that the jury was required to unanimously agree on exactly who the additional victims were for each offense in order for the unanimity requirement to be met.

Canady, however, did not request a specific-unanimity instruction at trial. A defendant who fails to propose specific jury instructions generally forfeits that issue on appeal. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). But, even absent a specific jury-instruction proposal, this court may review the jury instructions for plain error. *State v. Crowsbreast*, 629 N.W.2d 433, 438 (Minn. 2001) (providing that an unpreserved claim of an omitted specific-unanimity jury instruction is reviewed for plain error). Under the plain-error test, we examine the instructions to determine whether there was (1) an error, (2) that was plain, and (3) that affected appellant’s substantial rights. *State v. Gunderson*, 812 N.W.2d 156, 159 (Minn. App. 2012). If “any one of the requirements” of the plain-error test is not satisfied, we “need not address any of the others.” *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

We begin our plain-error analysis by examining the law governing the unanimity requirement. A jury's verdict must be unanimous in all criminal cases. Minn. R. Crim. P. 26.01, subd. 1(5); *State v. Plantin*, 682 N.W.2d 653, 662 (Minn. App. 2004) (providing that “[d]efendants have a constitutional right to a unanimous verdict”), *review denied* (Minn. Sept. 29, 2004). The jury must unanimously agree that the state “proved each element of the offense.” *State v. Pendleton*, 725 N.W.2d 717, 730-31 (Minn. 2007) (quotation omitted). But, while “the jury must unanimously agree on which acts the defendant committed if each act itself constitutes an element of the crime,” the jury is not required to unanimously agree on “alternative means or ways in which the crime can be committed.” *State v. Stempf*, 627 N.W.2d 352, 354-55 (Minn. App. 2001) (quotation omitted).

With that legal background in mind, we consider whether the district court plainly erred when it instructed the jury. “An error is plain if it is clear or obvious.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). An error is “clear or obvious” if it “contravenes case law, a rule, or a standard of conduct.” *Id.* (quotation omitted). An alleged error does not contravene case law unless the issue is “conclusively resolved.” *State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008). When reviewing jury instructions, we recognize that “district courts are entitled to considerable latitude when selecting language for jury instructions.” *State v. Carridine*, 812 N.W.2d 130, 144 (Minn. 2012). But a jury instruction cannot materially misstate the law. *Id.* 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).

Canady focuses on *Stempf* to support his argument that the district court plainly erred by failing to provide a specific-unanimity instruction. In *Stempf*, the state charged the appellant with one count of possession of a controlled substance but presented evidence on two separate acts of possession—one at the appellant’s workplace and one in the truck in which the appellant was travelling. *Id.* at 357. We analyzed the elements of the offense—(1) unlawful possession, and (2) one or more mixtures containing methamphetamine. *Id.* We concluded that because “the statute makes the act of possession an element of the crime,” the jury was required to unanimously agree on which of the two separate acts of possession supported its verdict. *Id.* And, because some jurors could have believed that the appellant possessed the substance found at his workplace and others could have believed that he possessed the substance found in his truck, we held that the district court erred by failing to provide a specific-unanimity instruction. *Id.* at 359.

Canady contends that this case is similar to *Stempf*. He argues that without a specific-unanimity instruction on the sentencing-enhancement factor, it is possible that some jurors could have disagreed as to the identity of the additional victim or victims but all still agreed that each offense involved more than one sex-trafficking victim. As a result, he contends that the jury instructions erroneously allowed for disagreement about which act or acts supported the sentencing-enhancement factor for each crime, and, therefore, he was denied his right to a unanimous verdict. Consequently, he maintains that the district court plainly erred when it failed to provide a specific-unanimity instruction.

The state, in contrast, argues that the district court did not err because this case is more similar to other decisions in which we have held that jury unanimity is not required with respect to the “alternative means” by which a crime can be committed. *See State v. Ayala-Leyva*, 848 N.W.2d 546, 554-55 (Minn. App. 2014) (holding that the jury was not required to unanimously agree on which of 20 overt acts appellant had committed in furtherance of a conspiracy because “each overt act provided alternative means to prove the element”), *review denied* (Minn. Aug. 11, 2015); *State v. Begbie*, 415 N.W.2d 103, 104-06 (Minn. App. 1987) (holding that the district court did not err by not requiring the jury to unanimously agree which of two potential individuals were the victim of appellant’s terroristic threats where appellant threatened a woman and her husband over the phone, and the applicable statute did not make the identity of the person who was threatened an element of the crime), *review denied* (Minn. Jan. 20, 1988). The state contends that the evidence in this case showed numerous means by which the multiple-victim sentencing-enhancement factor could have been met for each offense because there was evidence of numerous additional victims. The state emphasizes that the act that is punished under the sentencing-enhancement factor is the offender’s promotion of and/or sex trafficking of “more than one sex trafficking victim,” not the promotion of and/or sex trafficking of each additional individual. Consequently, the state maintains that the sentencing-enhancement factor does not require a specific-unanimity instruction and there was no error. Alternatively, the state argues that, if the district court did err, any error was not plain.

We need not decide whether the district court erred by not providing a specific-unanimity instruction regarding the sentencing-enhancement provision because we agree with the state that any potential error by the district court was not plain. Here, both parties cite to case law to support their respective arguments, but neither Canady nor the state cites to a case addressing whether a specific-unanimity instruction is required for jury trials involving the sentencing-enhancement provision at issue here—Minn. Stat. § 609.322, subd. 1(b)(4). Nor does either party cite any case law addressing the application of the unanimity requirement to sentencing-enhancement provisions more generally. The cases the parties do cite—including *Stempf*, *Begbie*, and *Ayala-Leyva*—all address the applicability of the unanimity requirement to the offense itself, not to a sentencing-enhancement provision. *See Ayala-Leyva*, 848 N.W.2d at 552-55 (conspiracy to commit first-degree controlled-substance crime); *Stempf*, 627 N.W.2d at 353, 357-59 (fifth-degree controlled-substance offense); *Begbie*, 415 N.W.2d at 104-06 (terroristic-threats offense). Accordingly, the cases the parties discuss in their briefs provide little to no guidance on the issue before us. And we are aware of no case law that addresses jury unanimity with respect to sentencing-enhancement provisions. Because case law has not conclusively resolved the issue before us, we cannot say that the district court committed a clear or obvious error by not providing a specific-unanimity instruction. *See Webster*, 894 N.W.2d at 787 (providing that an error is clear or obvious if it “contravenes case law, a rule, or a standard of conduct” (quotation omitted)); *Jones*, 753 N.W.2d at 689 (providing that an alleged error does not contravene case law unless the issue is “conclusively resolved”). And, because the district court did not plainly err,

we need not address whether any error affected Canady's substantial rights. *Lilienthal*, 889 N.W.2d at 785. Therefore, we conclude that the absence of a specific-unanimity instruction regarding the sentencing-enhancement provision does not require reversal.

II. The district court did not err by admitting evidence regarding other potential victims.

Canady next argues that the district court erred by admitting D.S.'s testimony that Canady asked her to create a prostitution advertisement for J.N. and Facebook messages pertaining to additional alleged victims who did not testify. Canady contends that the evidence was not relevant, was unfairly prejudicial, and constituted impermissible propensity evidence. Because Canady failed to object at trial to that evidence on the grounds he raises now, the plain-error test applies to this issue as well. *See State v. Vasquez*, 912 N.W.2d 642, 649-50 (Minn. 2018) (stating that forfeited issues are reviewed for plain error); *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993) (providing that "[a]n objection must be specific as to the grounds for challenge" and that a defendant does not preserve for appeal an objection made on different grounds than those raised on appeal), *review denied* (Minn. Oct. 19, 1993).

Evidence is relevant if it has "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." *State v. Strommen*, 648 N.W.2d 681, 686-87 (Minn. 2002) (quoting Minn. R. Evid. 401). Even if relevant, evidence of another crime, wrong, or act may not be admitted "to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b)(1). Relevant evidence also may be excluded

if “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Minn. R. Evid. 403.

Canady contends that the Facebook messages about “April Showers,” “Carmen,” “J.N.,” “4 hoes,” and others were not relevant to establishing the applicability of the “more than one sex trafficking victim” sentencing-enhancement provision because “there is insufficient information” to show that “the names referenced are actual people” or that “any of them were actually trafficked.” He further argues that even if the Facebook messages and D.S.’s testimony about J.N. were relevant, that evidence was unfairly prejudicial because it showed Canady’s general propensity to engage in sex trafficking-related behavior, or bad acts more generally, and thus the jury could have convicted Canady purely on that basis.

Canady’s arguments are not persuasive. First, the Facebook evidence Canady challenges was relevant. The Facebook messages made it more probable that Canady’s criminal conduct involved more than one victim. The Facebook messages were therefore relevant to establishing the applicability of the sentencing-enhancement provision.

Second, the Facebook messages and D.S.’s testimony about J.N. were not merely evidence of Canady’s propensity to engage in bad acts. The prosecution offered the evidence not to show Canady’s general character or disposition to promote prostitution or engage in bad acts, but rather as specific evidentiary support for the sentencing-enhancement factor. Furthermore, the probative value of the evidence was not outweighed by any danger of unfair prejudice, confusion of the issues, or misleading the jury because the evidence spoke directly to the “more than one sex trafficking victim”

factor. Accordingly, D.S.'s testimony and the Facebook messages were not unfairly prejudicial nor inadmissible propensity evidence. We thus conclude that the district court did not plainly err in admitting that evidence.

Affirmed.