

*This opinion is nonprecedential except as provided by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
A20-1039**

In the Matter of: Fatoumata Binta Diallo,
Respondent,

vs.

Omaru Jalloh,
Appellant.

**Filed May 17, 2021
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-DA-FA-19-8043

Karen Venice Bryan, Peter N. Basiliou, KB Law PLLC, Minnetonka, Minnesota (for appellant)

Deanna H. Thompson, Jessica Gutierrez Alm, Robins Kaplan LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

Omaru Jalloh courted Fatoumata Diallo from 2015 to 2019, when Diallo moved from Guinea to Minnesota and the couple married. The relationship soured quickly, and Diallo moved into a domestic-abuse shelter in December 2019. Citing physical and sexual

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

abuse, Diallo obtained an order for protection from which Jalloh now appeals. We reject as unconvincing Jalloh's contention that the district court received insufficient evidence to issue the order, his contention that the district court improperly prohibited him from submitting evidence, and his contention that his attorney's alleged ineffective assistance requires us to reverse the order. We therefore affirm.

FACTS

Fatoumata Diallo and Omaru Jalloh met through social media in 2015. From that point until the beginning of 2019, Diallo lived in Guinea and Jalloh lived in Minnesota. Diallo moved from Guinea to Minnesota in January 2019, the couple married in February 2019, and Diallo successfully moved the district court to issue an order for protection against Jalloh after she relocated to a domestic-abuse shelter in December 2019. This appeal concerns the order for protection.

The district court granted an *ex parte* order for protection based on Diallo's allegations of domestic abuse and followed with a post-hearing order after resolving Jalloh's dispute over the allegations. The district court received testimony from Diallo through a French interpreter, from Jalloh, and from Diallo's cousin. It refused to allow Jalloh to call additional witnesses, citing his failure to provide a witness list during discovery. The district court issued an order for protection prohibiting Jalloh from contacting Diallo for two years, based on Diallo's testimony, summarized below.

Diallo testified to facts tending to indicate that Jalloh acted violently toward her. According to her, Jalloh forced her to have intercourse with him the night she arrived in the United States and many times afterward. She said that he bruised her arms by pushing

her to the ground in February 2019 after she intervened in a dispute between Jalloh and the couple's roommate. A month later Jalloh shouted at Diallo, broke a dish she was eating from, chased her with a fork, and locked her outside their apartment. She said that Jalloh refused to allow her to have a key to their residence, and she testified that when she tried to call the police he snatched the telephone and pushed her outside. He prevented her from accessing her passport, frequently locked her in, and installed a recording device inside the apartment to monitor her. Diallo finally moved into a domestic-abuse shelter.

The district court believed Diallo's testimony and disbelieved Jalloh's denials. It found that Jalloh had inflicted fear of imminent physical harm and bodily injury or assault, justifying the order for protection. Jalloh appeals.

DECISION

Jalloh asks us to reverse the district court's decision granting Diallo's request for an order for protection. We will affirm an order for protection unless the district court's decision to issue it shows an abuse of discretion, the decision stands against logic and the facts, or the decision rests on an erroneous view of the law. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). The district court based the order on its finding that Jalloh engaged in domestic abuse. A district court may issue an order for protection "in cases of domestic abuse." Minn. Stat. § 518B.01, subd. 4 (2020). Domestic abuse of a spouse includes criminal sexual conduct. *Id.*, subd. 2(a)(3) (2020). And criminal sexual conduct includes using force or coercion to sexually penetrate another. Minn. Stat. § 609.344, subd. 1(c) (2018). Jalloh contests the district court's finding of domestic abuse.

Jalloh first maintains that Diallo’s testimony failed to establish his “intention to do present harm” to Diallo or to make her fear imminent harm, focusing on one of several alternative means to commit abuse. The argument is unavailing on its face because Diallo’s allegation that Jalloh forced her to have intercourse would, if proved beyond a reasonable doubt, constitute criminal sexual conduct. The district court found by a preponderance of the evidence that Jalloh engaged in conduct that would violate Minnesota Statutes section 609.344, subdivision 1(c). And this, as we have just outlined, in turn constitutes domestic abuse and supports the district court’s order. Jalloh’s intention and Diallo’s perception about imminent harm is therefore not necessary for the order. Our analysis can end here. But we add that the record also establishes another basis to affirm the order for protection. Diallo testified that Jalloh pushed and bruised her. Regardless of any intent to engage in future harm or any lack of fear, Jalloh’s assault causing Diallo harm also constitutes domestic abuse. *See* Minn. Stat. § 518B.01, subd. 2(a)(1) (2020); *Thompson*, 906 N.W.2d at 499 (“The plain language of subdivision 2(a)(1) does not require that the physical harm, bodily injury, or assault has occurred within a specified time before the petition is filed or be imminent.”) (quotation omitted). The district court expressly found Diallo’s testimony credible, and Jalloh does not challenge that finding. Because we do not correct harmless errors, Minn. R. Civ. P. 61, even if Jalloh’s arguments about his intention or Diallo’s fear had merit (and that appears unlikely), we would still not disturb the district court’s order because the alleged error did not prejudice the outcome.

Jalloh's remaining contentions against the order on the merits—that their living apart precludes the order and that the district court should have found him credible—fail on their face as legally unsupported. They warrant no further discussion.

Likewise unpersuasive are Jalloh's two procedural assertions. The first is that the district court improperly prevented him from submitting evidence and calling witnesses. The district court did preclude testimony to penalize Jalloh's failure to comply with discovery duties. We review the district court's choice of a sanction for an abuse of discretion. *Miller v. Lankow*, 801 N.W.2d 120, 127 (Minn. 2011). The district court has discretion to prohibit a party from introducing specified evidence if the party "fails to obey an order to provide or permit discovery." Minn. R. Civ. P. 37.02(b)(2). The record shows that Jalloh failed to respond to Diallo's discovery requests or to provide a witness list before trial. Jalloh does not deny that his conduct violated rule 37.02, maintaining that prohibiting him from calling other witnesses effectively denied him his right to a fair hearing. The argument fails to recognize that disregarding discovery duties is itself unfair and that excluding evidence is a means to curb a discovery violation and reestablish fairness. The limited sanction appears to us to have been a proportionate and suitable remedy to Jalloh's discovery violations. We see no abuse of discretion.

Jalloh's second and related procedural argument is that his trial counsel provided him with ineffective assistance. Specifically, he blames his attorney for the discovery failures. Jalloh points us to nothing in the record to establish his implication that the failures were caused by his attorney's neglect rather than his own. But more important, Jalloh identifies no legal authority as the source of his asserted right to effective performance by

his attorney. The Sixth Amendment guarantees criminal defendants the right to effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). This is not a criminal case, and Jalloh does not explain why the Sixth Amendment applies to protective-order disputes between private parties.

Affirmed.