

*This opinion is nonprecedential except as provided by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
A21-0402**

State of Minnesota,
Respondent,

vs.

Rayjon Matthew Willis,
Appellant.

**Filed January 10, 2022
Affirmed
Slieter, Judge**

Itasca County District Court
File No. 31-CR-20-1129, 31-CR-20-1182, 31-CR-20-1462

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

Matti R. Adam, Itasca County Attorney, Jacqueline A. Destache, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant directly appeals from the final judgments of conviction for 42 counts of violating a domestic abuse no contact order (DANCO), claiming the district court erred by the imposition of 42 sentences. Because none of the 42 DANCO violations share a unity

of time, they were not committed as part of the same behavioral incident, and we, therefore, affirm.

FACTS

The three district court files consolidated for our review relate to appellant Rayjon Matthew Willis's communication with his wife over three time periods. The following facts are undisputed.

Willis's Initial Arrest

On May 7, 2020, a state patrol trooper stopped the vehicle Willis was driving. Willis's wife was in the car with him, in violation of a DANCO issued in September 2019 by the Hennepin County District Court, which prohibited contact with his wife. The trooper arrested Willis, and respondent State of Minnesota charged Willis with one count of violating a DANCO, pursuant to Minn. Stat. § 629.75, subd. 2(d)(1) (2018).

Post-Arrest and day of First Appearance

While Willis was in jail, he contacted his wife via text and phone on the evening of May 7 and the morning of May 8. Willis temporarily stopped communicating with his wife when he was led from the jail to attend his first court appearance involving the May 7 DANCO violation charge. During the first appearance, the district court issued a new pretrial DANCO which also prohibited Willis from contacting his wife. Once Willis returned to jail the evening of May 8, he again spoke with his wife on the phone. Based on these contacts with his wife on May 7 and 8, the state charged Willis with three counts of violating a DANCO.

May 9 to June 15

From May 9 to June 15, Willis continued to communicate with his wife either by text or phone multiple times each day. The state charged Willis with 38 counts of violating a DANCO—one count for each day that appellant had contact with his wife in violation of the DANCO orders.

Willis pleaded guilty to all 42 counts of DANCO violations. The district court convicted and sentenced him to 42 concurrent 30-month executed sentences. Willis appeals.

DECISION

Willis argues that his criminal conduct consists of three behavioral incidents, that he should have been sentenced for only three of the charged counts and, therefore, the district court erred by imposing a sentence for each of the 42 counts.

District courts generally have broad discretion in sentencing. *State v. Soto*, 855 N.W.2d 303, 307 (Minn. 2014). Whether multiple offenses are part of a single behavioral incident is a mixed question of law and fact, and we review the district court’s factual findings for clear error. *See State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). However, we review the district court’s application of the law to those facts *de novo*. *See id.* Because the facts in this case are undisputed, we review *de novo* whether the offenses were committed as part of the same behavioral incident. *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

Pursuant to Minn. Stat. § 609.035, subd. 1 (2018), “if a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only

one of the offenses and a conviction or acquittal of any one of them is a bar to prosecution for any other of them.” A person’s conduct “is limited to acts committed during a single behavioral incident.” *State v. Branch*, 942 N.W.2d 711, 713 (Minn. 2020).

When the multiple crimes charged are intentional crimes, we first consider whether the conduct shared a unity of time—meaning it occurred at substantially the same time and place—and second, whether the conduct was motivated by an effort to obtain the same criminal objective. *State v. Degroot*, 946 N.W.2d 354, 365 (Minn. 2020). The state bears the burden of establishing by a preponderance of the evidence that the conduct was not a single behavioral incident. *Id.* If the state meets its burden on one of the two considerations, then we need not consider the other. *See, e.g., Munt v. State*, 920 N.W.2d 410, 417-18 (Minn. 2018) (analyzing only whether multiple criminal acts were motivated by the same criminal objective). This record demonstrates that the 42 DANCO violations did not share a unity of time. Therefore, we need not analyze the other consideration.

After arriving in jail on May 7 following his first DANCO violation, Willis began communicating with his wife and texted his wife again the next morning. Finally, once he returned to jail following his first appearance involving the first DANCO violation, Willis again contacted his wife (post-arrest and day of first appearance; three more violations). From May 9 through June 15, Willis continued to text and call his wife each day (38 violations). The state alleged the 42 counts of violating the DANCOS on the days during which Willis contacted his wife. Each count of a DANCO violation occurred, therefore, at different times and with multiple hours between. *See, e.g., Degroot*, 946 N.W.2d 354, 365-66 (affirming that a 45-minute break between communications is a sufficient

difference in time to support multiple convictions); *State v. Stevenson*, 286 N.W.2d 719, 720 (Minn. 1979) (holding that two criminal acts occurring five hours apart were not part of single behavioral incident); *State v. Schevchuk*, 163 N.W.2d 772, 776 (Minn. 1968) (holding that several crimes were not part of single behavioral incident when offenses occurred over a period of two and one-half hours).

Willis argues that the breaks in his communication with his wife were out of his control because his access to the phone was restricted each night and, therefore, these breaks should be seen as a unity of time. We are not persuaded. First, loss of phone access to Willis—whether it be while officers took Willis into custody, during Willis’s court hearing, or each night—simply suggests he did not have the ability during those times to commit more DANCO violations. Second, the reason for the break in time is not critical; the break itself is. Based on our *de novo* review of this record, these breaks between communications are sufficient to conclude that each act of a DANCO violation was separated by a unity of time.

Affirmed.