

*This opinion is nonprecedential except as provided by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
A22-1611**

State of Minnesota,
Respondent,

vs.

Terry Marcell Allen,
Appellant.

**Filed September 11, 2023
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Stearns County District Court
File No. 73-CR-22-2963

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

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Terry Allen grabbed his girlfriend's hair and kicked her in the side after she accused him of taking her marijuana and searched his bedroom for it. The jury found Allen guilty of two counts of felony domestic assault and one count of third-degree assault, and the district court convicted him on all three counts. Allen appeals his convictions, contending

that the district court erred by admitting expert testimony and the girlfriend's unredacted medical records identifying him as her assailant. He also challenges the sufficiency of the evidence of one of his felony-domestic-assault convictions. He argues finally that the district court erroneously convicted him on two counts of felony domestic assault. Because the district court's evidentiary decisions fall within its discretion or were harmless, and the evidence supports the conviction, we affirm in part. But because the district court should have entered only one felony-domestic-assault conviction, we reverse in part and remand for the district court to correct the warrant of commitment.

FACTS

Appellant Terry Allen's girlfriend, whom we will call Joan in the interest of privacy, reported to police in April 2022 that Allen assaulted her by grabbing her hair, holding her neck, and kicking her. The state charged Allen with two counts of felony domestic assault and one count of third-degree assault, and the case proceeded to a jury trial. The prosecutor asked the court for a pretrial ruling to admit Joan's medical records, which included a reference to her identifying Allen as her assailant. The prosecutor also asked permission to call Scott Miller, the executive director of the Domestic Abuse Intervention Program, as an expert witness to testify to counterintuitive victim behaviors. The district court allowed the medical records but required the state to redact them to exclude any assailant-identification reference, and it allowed Miller's expert testimony over Allen's argument that the testimony would not be helpful to the jury.

Joan testified at trial to the circumstances of the incident. She recounted that she met Allen in 2019 and that the two became engaged in 2020. They ended their engagement

in 2021 but the relationship continued, on and off. She testified that Allen was controlling, that he used physical force against her during arguments, and that he threatened her and stole from her during the relationship.

Joan had been staying with Allen when the incident occurred. She awoke to find her marijuana missing, and she suspected that Allen took it. She ransacked his room searching for it. Allen returned home with groceries, and she asked him about the marijuana. She testified, “The nicer I asked, the more upset he got.” She said that Allen was angry about the mess she made to his room. He grabbed her hair, ordered her to clean the room, and told her to put away the groceries he bought. She testified that he dragged her through the hallway by her hair and kicked her on the left side of her body. She said she heard her bones break. She told Allen that she couldn’t breathe, and he kicked her again. Then he pulled her by her hair into the bedroom and continued kicking her, demanding that she clean the room. She asked him to start the washing machine. She said that he at first refused, standing in the doorway with his arms crossed. When Allen eventually left to start the laundry, Joan escaped from the home. Joan did not immediately seek treatment or report the incident to police. She went to her storage unit to store her personal items and then she went to the hospital. Joan at first told hospital staff that she fell from a tree. She later said that Allen had assaulted her, and she asked staff to report the assault to police. Medical staff determined that Joan suffered a fractured rib, a punctured lung, and bruised extremities.

Allen’s landlord testified. She said that she saw Joan the morning of the incident, and that she appeared to be waiting for a ride.

The state moved to admit Joan's medical records without redactions as a prior consistent statement. The court granted the motion and admitted the unredacted records over Allen's objection. A police officer testified that he had also spoken with Joan at the hospital. In recordings of that conversation, Joan identified Allen as her assailant. The officer photographed Joan's injuries at the hospital, and the photographs were admitted into evidence.

The state called Scott Miller as an expert witness to testify about counterintuitive victim behaviors. The district court allowed Miller to testify as an expert over Allen's renewed objection. Miller testified about the mindset of batterers and the challenges that victims face under the control of a batterer. He described different tactics that men who batter women use to control them, including threats, isolation, and economic abuse. He explained why a victim of abuse may delay reporting abuse or may not report abuse and why a victim may not end a relationship with an abuser.

The jury found Allen guilty of all three charged offenses. Allen asked the court to execute his 21-month prison sentence, and the court sentenced him on only the third-degree-assault count after the state acknowledged that the charges all arose from the same behavioral incident. Allen's warrant of commitment reflects a conviction of all three offenses.

Allen appeals.

DECISION

Allen makes four principal arguments on appeal. He argues first that the district court improperly allowed Miller to testify as an expert witness, contending that the testimony was unhelpful and prejudicial. He also argues that Joan's unredacted medical records should not have been admitted under the residual hearsay exception. He questions the sufficiency of the evidence against him for one of his felony-domestic-assault convictions. And he argues that his warrant of commitment should be amended to include convictions of only third-degree assault and one count of felony domestic assault. Only his last argument prevails.

I

Allen first contends that the district court abused its discretion by admitting Miller's expert testimony. We review evidentiary rulings for an abuse of discretion when the evidence was objected to at trial, *see State v. Vue*, 606 N.W.2d 719, 724 (Minn. App. 2000), and we review unobjected-to errors for plain error, *State v. Word*, 755 N.W.2d 776, 781 (Minn. App. 2008). Allen and the state dispute which standard applies here because they disagree about the scope of Allen's objection to the expert testimony. But resolving this dispute is unnecessary because, applying even the lower standard of abuse of discretion, Allen's challenge fails.

Allen contends that the district court should have excluded Miller's expert testimony as both unhelpful to the jury and unfairly prejudicial. He argues that the testimony was not helpful because Joan never exhibited counterintuitive behaviors requiring expert testimony because the reasons she gave for her delay in reporting the incident were understandable

to the jury. Expert opinion testimony must be helpful to be admissible. Minn. R. Evid. 702. And expert opinion testimony is unhelpful when it would not aid the jury to reach a conclusion. *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). Expert testimony on battered-woman syndrome, which is analogous to the type of testimony offered here about patterns of domestic abuse, has been admissible when it “could help the jury understand behavior that might otherwise undermine the complainant’s credibility.” *State v. Grecinger*, 569 N.W.2d 189, 196 (Minn. 1997). In *Grecinger*, this meant that the testimony helped explain why the victim returned to the relationship after being assaulted, gave contradictory accounts about her injuries, delayed pursuing prosecution, and recanted statements she had made about the abuse. *Id.* at 195. We can consider Miller’s testimony in this framework.

Given the district court’s discretion, we believe that Joan’s actions were sufficiently counterintuitive for the district court to conclude that Miller’s testimony would be helpful for reasons like those considered in *Grecinger*. It is true that her delay in reporting the assault to police was not particularly long—only about one day passed between the incident and the report. But the jury might think the delay counterintuitive to a victim’s actions. The evidence also showed that she remained in her relationship with Allen despite her testimony that he used control and physical force against her. And she had changed her story, first telling hospital staff she fell from a tree and later accusing Allen of assault. Under these circumstances, we hold that the district court acted within its discretion by treating Miller’s opinion testimony as helpful to explain counterintuitive victim behaviors.

Allen maintains that Miller’s testimony nevertheless unfairly prejudiced him by including broad generalizations about “men who batter” and victims. Even helpful expert testimony may be inadmissible “if its probative value is substantially outweighed by the danger of unfair prejudice.” Minn. R. Evid. 403. Expert testimony suggesting that a defendant is guilty based on generalizations placing him in a class of offenders, or based on improper stereotyping, should therefore be excluded as inadmissible. *See Vue*, 606 N.W.2d at 723 (holding that any probative value from expert testimony was improperly “based on generalizations that appellant is part of a ‘guilty class’ of spouse-abusers, and the victim is part of a ‘victim class’ of abused women”); *State v. Williams*, 525 N.W.2d 538, 548 (Minn. 1994) (holding that evidence was inadmissible when officers testified that drug couriers act in a specific way and the jury was encouraged to infer that defendant was a drug courier because she fit the profile). This is a close question here.

Allen argues that he was prejudiced because Miller relied on generalizations about batterers and victims and improperly relied on gender stereotypes, pointing to Miller’s testimony about “men who batter” and his exclusively referring to perpetrators as male and victims as female. He also highlights Miller’s testimony that battering is a “socially constructive problem, a learned behavior that they have taken on about what they get to do and how they get to be as men.” He compares Miller’s testimony to the expert testimony that we held was inadmissible in *State v. Vue*. In *Vue*, the district court admitted the state’s expert’s testimony about Hmong culture and about male-female relationships in traditional Hmong marriages. 606 N.W.2d at 721. We reversed *Vue*’s conviction because we held that the expert’s testimony impermissibly introduced cultural stereotyping to imply *Vue* was

guilty. *Id.* at 723. And we emphasized the state’s reliance on Vue’s ethnicity in our holding. *Id.* Allen contends that Miller’s testimony here similarly implied that Allen was guilty because he belonged to a class of male batterers. His contention is not meritless. Miller’s testimony ostensibly about counterintuitive *victim* behavior drifted close to characterizations of *offender* behavior and motivations, an area that is not necessary to help the jury understand matters of uncommon understanding. But we are satisfied that the testimony emphasized the reasons why victims may fail to report abuse or may otherwise act against a jury’s expectations about an abuse victim. The references to men who batter put these concerns in perspective. They arguably provided background information for the jury to understand his conclusions, which were appropriately tied to the reason for admitting his testimony. We are concerned that Miller’s testimony at times arguably blurred the line between improper offender generalizations and explanations of victim behavior. But given the high (“substantially outweigh”) standard of inadmissibility and our deference to the district court’s broad discretion in evidentiary decisions, we will not reverse on rule 403 grounds. Again, this is a close case. Our opinion should not be read as endorsing all of Miller’s testimony; we hold only that the district court did not abuse its discretion by failing to exclude the testimony as unfairly prejudicial.

We are not persuaded otherwise by Allen’s reliance on our nonprecedential opinion in *State v. Lucas*, No. A21-0604, 2022 WL 2912030 (Minn. App. July 25, 2022), *rev. denied* (Minn. Oct. 18, 2022). In *Lucas* we recently addressed a challenge to the same expert witness’s testimony, and we held that his “testimony *about the difference between male and female perpetrators of domestic violence* corresponds to the improper character

evidence discussed in *Williams* and it improperly invoked gender stereotypes to support impermissible inferences like the testimony deemed inadmissible in *Vue*.” 2022 WL 2912030, at *6 (emphasis added). The focus of our *Lucas* reasoning, leading to our holding that Miller’s testimony was impermissibly prejudicial, was Miller’s “lengthy” testimony about the differences in perpetrator intent between the sexes, including that male perpetrators of domestic abuse feel entitled to punish their victims while female perpetrators of abuse typically intend to stop abuse from their male partners. *Id.* We also emphasized that Miller testified about these stereotypes “without connecting that testimony to the counterintuitive behavior of domestic-abuse victims.” *Id.* Here, Miller’s testimony did not contain the stereotypes about male and female perpetrators that we held impermissible in *Lucas*. And although the background information he provided about the characteristics of batterers and victims again closely approached the foul line, Miller connected that background testimony to reasons why victims may exhibit counterintuitive behaviors after an incident of abuse.

Allen also challenges attributes of Miller’s testimony and the state’s reliance on his testimony that go to the weight, rather than content, of the testimony. He asks us to consider Miller’s credentials, alleging that his theories are not peer-reviewed, and he points to the prosecutor’s heavy use of the testimony in closing argument. Allen was free to challenge Miller’s credentials in cross-examination and to highlight his credibility concerns to the jury in closing argument. The factors going to the weight of Miller’s testimony are insufficient for us to hold that the district court abused its discretion.

II

Allen unconvincingly maintains that we should reverse his conviction because the district court allowed the state to introduce Joan's unredacted medical records identifying him as her assailant. The district court modified its pretrial ruling that only the redacted records would be admitted, citing Joan's consistent testimony and allowing the reports under the residual hearsay exception. We review the district court's evidentiary ruling for an abuse of discretion, considering both the alleged error and any resulting prejudice. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). For the following reasons, we agree with Allen that the district court abused its discretion by admitting the unredacted records, but we decline to reverse his convictions because the error was harmless.

The district court should not have admitted the medical records unredacted. Statements to medical professionals made for medical diagnosis or treatment are not generally inadmissible under the hearsay rule, Minn. R. Evid. 803(4), but statements that identify an assailant are typically inadmissible under the medical-records exception. *See State v. Robinson*, 718 N.W.2d 400, 404 (Minn. 2006). The district court allowed Joan's unredacted medical records under the residual hearsay exception:

A statement not specifically covered by rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Minn. R. Evid. 807. The medical records here fail to meet rule 807’s requirement that the statement be more probative than any other available evidence of the same fact for which the statement is offered.

The medical reports reference Joan’s assailant six times, ranging from vague statements—that she was “admitted medically after a fairly severe assault from her boyfriend”—to specific ones that named Allen directly—“[s]he had been with her partner Terry for 4 years this is the person who assaulted her prior to this admission.” But by the time these reports were offered, Joan had already testified identifying Allen as her assailant. Because Joan’s direct testimony was more probative than her hearsay statements introduced through the medical reports, the unredacted reports were not properly admitted under the rule 807 residual hearsay exception. But for the same reason, the district court’s erroneous admission of the unredacted records was harmless. The records were probative of identity, but Joan had identified Allen to police after the assault, she never recanted her identification, and she reiterated it at trial. The jury heard Joan directly identify Allen and saw body-worn camera footage in which Joan identified Allen as her assailant before the district court admitted the medical reports. The additional identification of Allen in those reports did not impact the verdict, and we disagree with Allen that the records improperly bolstered Joan’s credibility.

III

Allen argues that the evidence was insufficient to prove that he committed domestic assault by intending to cause Joan fear. The state proved Allen’s intent to cause fear by circumstantial evidence, and so we review its sufficiency in two steps: we first identify the

facts proved at trial by accepting facts consistent with the verdict as true and by rejecting inconsistent facts, and we then examine whether the facts proved are consistent with any rational hypothesis other than guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). The circumstances proved here point only to Allen’s guilt.

Allen argues that the state did not prove that he intended to cause Joan fear of harm. A person is guilty of domestic assault when he “commits an act with intent to cause fear in another of immediate bodily harm or death.” Minn. Stat. § 609.2242, subd. 1(1) (2020). The offense is a felony when the offender’s criminal history meets a specified level. *Id.* This is a specific-intent offense, requiring evidence that Allen specifically intended to cause Joan fear. *See State v. Fleck*, 810 N.W.2d 303, 308–09 (Minn. 2012). To commit a general-intent crime like assault with intent to cause harm, in comparison, the actor must intend only the act and not the result. *Id.* at 309. “Intent can be inferred from the idea that a person intends the natural consequences of his or her actions.” *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (quotation omitted). Allen maintains that the state proved only general intent—that he intended to act by kicking Joan—and not specific intent—that he intended to cause her fear of harm.

Joan’s testimony reveals the circumstances the state proved at trial. Allen was angry because Joan messed up his room during a search for marijuana. Allen’s anger increased as Joan questioned him about taking her marijuana. Allen grabbed her hair and ordered her to pick up the room. Allen became increasingly aggressive and violent as she resisted. Allen dragged her through the hallway. He kicked her. He yelled at her to “Get up. Get up. Sit down. Take a rest and breathe to finish cleaning up the room.” He stood, arms crossed

in the doorway after she asked him to start the laundry, at first refusing to go. Joan fled the home after Allen went to begin the laundry. These circumstances are consistent with the jury's conclusion that Allen intended to cause Joan fear, and we hold that they are inconsistent with any alternative hypothesis, including the one advanced by Allen (that he intended to cause Joan harm, not fear). His physically violent actions clearly demonstrate that he intended to harm her, but his yelling and intimidating posturing in the doorway, in context, can be interpreted only as intending to put, or keep, Joan in fear of continued physical injury. *See Nelson*, 880 N.W.2d at 860. The evidence supports the element.

We are not persuaded to a different conclusion by Allen's highlighting the state's closing argument, where the prosecutor argued only that Allen's kicking Joan was enough to show both domestic assault by harm and domestic assault by fear. Our focus is on whether the state offered enough evidence to prove the element, not whether the state pointed the jury to the right evidence.

IV

Allen argues last that he was improperly convicted of two counts of felony domestic assault contrary to Minnesota Statutes section 609.04 (2020). We review *de novo* whether a conviction violates section 609.04. *State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021). A person with a requisite criminal history commits felony domestic assault when he “(1) commits an act with intent to cause fear in another of immediate bodily harm or death; or (2) intentionally inflicts or attempts to inflict bodily harm upon another.” Minn. Stat. § 609.2242, subds. 1, 4 (2020). Allen was charged with and found guilty of two separate counts of domestic assault based on both theories of criminal liability. A defendant

can be convicted of a charged crime or of an included offense, but not both, Minn. Stat. § 609.04, subd. 1, and the section “bars multiple convictions under different sections of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). The state conceded during Allen’s sentencing hearing that “this was one behavioral incident,” and the convictions are undisputedly different sections of the same criminal statute.

The state argues for a different result on appeal after conceding at sentencing that the offenses were one behavioral incident. We consider time, place, and criminal objective when deciding whether offenses comprise one behavioral incident. *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006). The offenses here depended on the same set of facts at the same time in the same place. We reverse in part and remand for the district court to correct the warrant of commitment to reflect only one felony-domestic-assault conviction.

Affirmed in part, reversed in part, and remanded.