

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0116**

State of Minnesota,
Respondent,

vs.

Christopher Don Boswell,
Appellant.

**Filed April 7, 2025
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-22-25761

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Smith, Tracy M., Judge; and
Bratvold, Judge.

SYLLABUS

1. In a prosecution for felony stalking under Minnesota Statutes section 609.749, subdivision 5 (Supp. 2021), when more than two qualifying criminal acts are alleged, a district court does not err when it instructs a jury that to find the “stalking” element of section 609.749, subdivision 5(b), the jurors must unanimously find that at least

two qualifying criminal acts are proved beyond a reasonable doubt but need not agree as to which qualifying criminal acts those are.

2. An offense that is a predicate criminal act for the “stalking” element of section 609.749, subdivision 5(b), is not an included offense of stalking under Minnesota Statutes section 609.04 (2022) when the defendant is found guilty of stalking and also of the predicate offense.

OPINION

SMITH, TRACY M., Judge

Appellant Christopher Don Boswell was convicted of stalking, first-degree criminal sexual conduct, second-degree assault, promoting prostitution, and unlawful possession of a firearm, based on his conduct during an approximately six-month domestic relationship with the victim. In this direct appeal from the judgments of conviction, Boswell argues that the district court erred by (1) admitting testimony from a former girlfriend as relationship evidence under Minnesota Statutes section 634.20 (2022); (2) denying Boswell’s motion for a mistrial based on the former girlfriend’s testimony that she thought he used drugs and on a detective’s testimony that he saw Boswell in jail custody; (3) instructing the jury that it did not need to unanimously agree on which two acts by Boswell constituted “stalking” under section 609.749, subdivision 5(b); (4) imposing separate sentences for stalking, first-degree criminal sexual conduct, and second-degree assault in violation of Minnesota Statutes section 609.035 (2022 & Supp. 2023) because the offenses were part of a single behavioral incident; and (5) entering convictions for stalking, first-degree criminal sexual conduct, and second-degree assault in violation of Minnesota Statutes section 609.04

because the latter offenses were lesser-included offenses of stalking. Boswell also raises other arguments in a pro se supplemental brief. We affirm.

FACTS

The following facts are drawn from the jury trial in this case.

In late January or early February 2022, Boswell met M.B. At the time, M.B. was 29 years old and suffered from serious health conditions including a condition that caused her legal blindness and required a permanent shunt in her brain. M.B. also struggled with addiction. In January 2022, she met Boswell through other contacts as a source of drugs. They started a romantic relationship, and shortly thereafter Boswell moved into M.B.'s apartment, where he lived until July 22, 2022.

On that date, the Brooklyn Park Police Department received a phone call from M.B.'s mother, requesting a welfare check on M.B. An ambulance and two police officers responded to M.B.'s apartment. When the officers saw M.B., she had bruises "all over her body," cuts on her face, "knots" on her head, and a mark on her neck consistent with strangulation by a rope or cord. M.B. went to the hospital for treatment of her injuries.

Two days later, based on M.B.'s report to hospital staff about how she had received her injuries, a nurse performed a forensic examination on her. M.B. told the nurse that Boswell was the person who injured her. The nurse took photos to document M.B.'s injuries. Shortly after the forensic examination, M.B. reported to Detective Husarik of the Brooklyn Park Police Department that Boswell had abused her multiple times during their relationship.

Respondent State of Minnesota charged Boswell with five felony counts: (1) first-degree criminal sexual conduct—penetration—fear of great bodily harm, in violation of Minn. Stat. § 609.342, subd. 1(a) (Supp. 2021); (2) promoting prostitution of an individual, in violation of Minn. Stat. § 609.322, subd. 1a(2) (Supp. 2021); (3) second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2020); (4) possession of ammunition or a firearm after conviction for a crime of violence, in violation of Minn. Stat. § 624.713, subd. 1(2) (2020); and (5) stalking, in violation of Minn. Stat. § 609.749, subd. 5(a).

The case proceeded to a jury trial. The state presented testimony from nine witnesses: M.B.; M.B.’s mother; Detective Husarik and four other police officers; the nurse examiner; and D.J., one of Boswell’s former girlfriends, who, over Boswell’s objection, testified about their prior relationship. Boswell did not testify.

M.B.’s Testimony

M.B. testified to the following. Beginning in late February or early March 2022, Boswell began abusing M.B. The first incident was when M.B. awoke to find Boswell choking her. Boswell also began to hit and put his hands on M.B., resulting in her suffering a black eye at one point. Boswell became jealous and controlling. He accused M.B. of cheating on him and sleeping with other men in exchange for drugs. On one occasion, he punched her in the face for talking with a customer-service agent on the phone. On one or two occasions, he struck her with her white cane. Boswell also pulled M.B. by her hair, which was particularly painful because of the shunt in her brain. Boswell whipped M.B. with phone cords and extension cords. He put out cigarettes on her arms. He strangled her

multiple times—with his hands, with a sheet, and with cords. On M.B.’s birthday in May, he barricaded her bedroom door, made her take off her clothes, and poured hot honey on her; she went to the hospital for burns the following day, but she did not identify Boswell as her assailant.

Boswell had a gun, although he was not supposed to, and he made M.B. buy bullets for it. Boswell hit M.B. with the gun, shoved it in her mouth, and held it against her vagina, kneecaps, thighs, and stomach while threatening her. Boswell once drove them to what M.B. believed was a graveyard. Boswell had M.B. get out of the car and told her she was about to die. When she dropped to her knees and begged him to stop, he fired his gun near her, although she could not see exactly where because of her blindness.

Two or three times when M.B. was in the bathtub, Boswell threatened to electrocute her. Boswell also attempted to drown her and put his gun in M.B.’s mouth while she was in the tub, telling her to lie down so that he could “kill [her] that way.”

Boswell also began suggesting that M.B. sleep with men and women for money. One day in June, Boswell came to the apartment accompanied by another man. Boswell told M.B. to suck the man’s penis. Understanding what Boswell wanted, she asked, “Where’s the money?” Boswell said that it was “already taken care of.” Fearing what might happen if she refused, she “started doing what [she] was told.” The man inserted his penis in her mouth. Boswell then walked behind her, pulled down his pants, and put his penis in her vagina. M.B. did not want to do either sexual act. Afterward, Boswell also told her to suck his penis, which she did.

On July 21, when Boswell and M.B. were out of the apartment, Boswell became angry with M.B. and told her to go back to the car. Once they were both in the car, Boswell drove them to a liquor store and got out of the vehicle. When he got back in the car, he dumped beer on M.B.'s head, told her to get out of the car and on her knees, and fired a gun near her. They then returned to the apartment, where Boswell continued to physically assault her. M.B. believed "it was going to be [her] last night."

The following morning, when Boswell left the house, M.B. called her mother and falsely told her that she was overdosing, believing that an overdose would get a faster response from police. M.B. was taken to the hospital that day, and two days later she had the forensic examination.

Detective Husarik's Testimony

Detective Husarik testified about his investigation. During his testimony, the state asked him, "Did you meet—did you see Mr. Boswell in the Hennepin County Jail on August 2, 2022?" He responded, "Yes." Defense counsel objected based on relevance. The district court sustained the objection and instructed the jury to disregard Husarik's response.

D.J.'s Testimony

Six months before trial, the state gave notice of its intent to introduce prior relationship evidence under Minnesota Statutes section 634.20. Specifically, it sought to introduce testimony from D.J. about similar domestic abuse that she suffered from Boswell when they were in a relationship. On the second day of trial, the district court heard

arguments from the parties on the proffered testimony and ruled that the state could introduce it.

D.J. testified as follows. She and Boswell had a seven-month relationship in 2021. He moved in with her. She thought that Boswell was a “nice person” who “just turned evil.” He became physically abusive and frequently accused her of cheating. Boswell stole two of her guns while they were dating and, when she threatened to tell the police, he beat her with one of the guns. On one occasion, he tried to put her in the bathtub because he was planning to shoot her. She resisted, and he hit and dragged her. He choked her and tried to put a belt around her neck. In response to questions from the state, D.J. said that she thought that Boswell used drugs when she was dating him. He would falsely accuse D.J. of using drugs, but she believed he appeared to be using drugs because he would “look different and mean and . . . crazy.” During D.J.’s testimony, the district court instructed the jury that it should consider her testimony solely to help determine whether Boswell had committed the acts that he was charged with in the complaint.

Motion for Mistrial

After D.J.’s testimony, Boswell moved for a mistrial based, in relevant part, on Husarik’s statement that he had seen Boswell in jail and on D.J.’s testimony about Boswell’s suspected drug use. The district court denied the motion.

Conviction and Sentencing

At the close of trial, the jury found Boswell guilty of all counts charged. The jury returned a special verdict form that affirmatively answered five questions supporting aggravated sentences. Boswell was convicted of all five counts and was sentenced to

concurrent prison terms of 72 months for stalking, 360 months for first-degree criminal sexual conduct, 60 months for illegal possession of ammunition or a firearm, and 86 months for second-degree assault. The district court did not impose a sentence for promotion of prostitution.

Boswell appeals.

ISSUES

I. Did the district court abuse its discretion by admitting D.J.'s testimony as relationship evidence under Minnesota Statutes section 634.20?

II. Did the district court abuse its discretion by denying Boswell's motion for a mistrial?

III. Did the district court err by instructing the jury that it need not unanimously agree on which two of appellant's criminal acts constituted "stalking" under Minnesota Statutes section 609.749, subdivision 5(b)?

IV. Did the district court err under Minnesota Statutes section 609.04 by entering convictions for first-degree criminal sexual conduct, second-degree assault, and stalking?

V. Did the district court err under Minnesota Statutes section 609.035 by imposing separate sentences for first-degree criminal sexual conduct, second-degree assault, and stalking?

VI. Is Boswell entitled to relief on arguments raised in his pro se supplemental brief?

ANALYSIS

I. The district court did not abuse its discretion by admitting D.J.’s testimony as relationship evidence under Minnesota Statutes section 634.20.

Boswell argues that the district court reversibly erred by admitting the testimony of D.J. as relationship evidence under Minnesota Statutes section 634.20. He argues that the testimony was inadmissible for two reasons: first, because “not all of it was ‘domestic conduct’” under section 634.20 and, second, because “its probative value was substantially outweighed by the danger of unfair prejudice” that it presented.

Appellate courts review a district court’s evidentiary rulings for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). Even if the evidence was erroneously admitted, appellate courts generally will not reverse a verdict “unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation omitted). The appellant bears the burden to show that evidence was erroneously admitted and that it prejudiced him. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

Evidence of a criminal defendant’s other crimes or bad acts is inadmissible to prove that the defendant acted in conformity with those crimes or acts, but such evidence may be admitted for other purposes. Minn. R. Evid. 404(b)(1). Under section 634.20, certain relationship evidence may be admitted to “illuminate[] the history of the relationship between an accused and a victim” and thus contextualize the charged crime. *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004); *see also State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006) (describing evidence admissible under section 634.20 as a type of

“relationship evidence”). Relationship evidence under the statute may include evidence of a defendant’s relationships with persons other than the victim. *See State v. Valentine*, 787 N.W.2d 630, 637-38 (Minn. App. 2010), *rev. denied* (Minn. Nov. 16, 2010). As we explained in *Valentine*, “evidence showing how a defendant treats his family or household members, such as his . . . other girlfriends, sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” *Id.* at 637.

Section 634.20 establishes the standard for admissibility of relationship evidence. *See Bell*, 719 N.W.2d at 638 n.4. The evidence may be admitted “unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. Stat. § 634.20.

A. Considering D.J.’s testimony as “domestic conduct” under section 634.20 relationship evidence was not an abuse of discretion.

As an initial matter, we address the state’s contention that Boswell forfeited the argument that the testimony did not involve “domestic conduct” under the statute because he failed to raise that argument in the district court. Generally, a reviewing court will consider only those issues that were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). And “[a]n objection must be specific as to the grounds for challenge.” *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993), *rev. denied* (Minn. Oct. 19, 1993). As the state notes, Boswell did not object when D.J. gave the specific testimony that he asserts was about his “general character,” such as D.J.’s

testimony that Boswell “turned evil,” used drugs, and stole her guns. But, before trial, Boswell did generally object to the state’s request to introduce D.J.’s testimony under section 634.20, arguing that the evidence was not relationship evidence. Giving Boswell the benefit of a generous reading of his pretrial objection, we conclude that the argument was sufficiently raised to preserve it for appeal.

We turn to the merits of the argument. Boswell argues that the conduct that D.J. described was not “domestic conduct” because it did not rise to the level of any of the crimes comprehended by the term in section 634.20.

Section 634.20 applies to “[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members.” Minn. Stat. § 634.20. “Domestic conduct” under the statute “includes, but is not limited to,” evidence of “domestic abuse,” as defined in the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 (2022). *Id.* The Domestic Abuse Act defines “domestic abuse” as, among other things, “physical harm, bodily injury, or assault” or “the infliction of fear of imminent physical harm, bodily injury, or assault” when committed against a romantic partner. Minn. Stat. § 518B.01, subd. 2(a)(1), (2), (b)(7).

In *State v. McCurry*, we interpreted the “not limited to” language of section 634.20 “to encompass general testimony about the relationship, including conduct that does not rise to the level of the crimes listed in the definition of ‘similar conduct.’” 770 N.W.2d 553, 560 (Minn. App. 2009), *rev. denied* (Minn. Oct. 28, 2009). Such testimony includes descriptions of “ongoing tension, arguments, or minor spats” between the parties to the relationship. *Id.*

Here, D.J. testified that Boswell threatened her and physically abused her, which is evidence of “domestic abuse,” as defined under section 518B.01. She also testified that, at the start of their relationship, Boswell was “nice” but then he “just turned evil.” She testified that he falsely accused her of using drugs but that he seemed to be using drugs himself, based on how he looked. She testified that he stole her guns and beat her when she threatened to go to the police. In context, these parts of D.J.’s testimony described the tension, fear, and control dynamic in her relationship with Boswell. Accordingly, it was not an abuse of discretion to consider the testimony as “domestic conduct” under section 634.20. *See id.*

B. The risk of unfair prejudice did not substantially outweigh the probative value of the evidence.

Boswell next argues that the district court abused its discretion by admitting D.J.’s testimony because its probative value was substantially outweighed by the potential for unfair prejudice.

Boswell first challenges the probative value of the testimony. He contends that the evidence “had little probative value because the State did not need the evidence,” given the existence of other evidence helpful to assessing M.B.’s credibility, including M.B.’s statement to the nurse and the results of her forensic examination. But, while “the need for section 634.20 evidence is naturally considered as part of the assessment of the probative value versus prejudicial effect of the evidence,” “a separate analysis of need” is not required to admit evidence under section 634.20. *Bell*, 719 N.W.2d at 639.

Here, the testimony about Boswell’s abuse of a past romantic partner had significant probative value because it helped the jury evaluate the credibility of M.B.’s account of abuse. *See State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (deciding that the relationship evidence in that case “had significant probative value in assisting the jury to judge witness credibility”), *rev. denied* (Minn. Oct. 29, 2008). The abuse that D.J. experienced was, as the state says, “uncannily similar” to the abuse described by M.B. D.J. testified that Boswell moved into her apartment after they started dating and that, over the course of their relationship, he hit and strangled her, tried to put her in a bathtub while threatening to shoot her with a gun, and repeatedly accused her of cheating on him.

But Boswell argues next that the risk of unfair prejudice outweighed the probative value of the evidence. “[U]nfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *Bell*, 719 N.W.2d at 641 (quotation omitted). In arguing that D.J.’s testimony was unfairly prejudicial, Boswell contends that D.J.’s testimony that he “turned evil,” may have used drugs, and stole her guns served only to establish his “bad character.” But, as noted above, we conclude that these pieces of D.J.’s testimony, in context, fell within the scope of domestic conduct, and we are not convinced that these pieces of testimony persuaded by illegitimate means.

Boswell also argues more generally that the potential for unfair prejudice from the relationship evidence was substantial “because the district court did nothing meaningful” to prevent the evidence from being misused by the jury as propensity evidence. He notes that the district court did not specifically instruct the jury not to use the relationship

evidence “as character or propensity evidence.” The likelihood of unfair prejudice from relationship evidence may be lessened by making a cautionary instruction to the jury. *State v. Benton*, 858 N.W.2d 535, 542 (Minn. 2015). During D.J.’s testimony, the district court instructed the jury that the evidence was “being offered for the limited purpose of demonstrating the nature and extent of the relationship between [Boswell] and [M.B.] in order to assist [the jury] in determining whether [Boswell] committed those acts in which [he] is charged” and that the jury was “not to convict [Boswell] on the basis of conduct” described by D.J. Although Boswell suggests that the district court should have instructed differently, we disagree that the district court did not meaningfully instruct the jury on the proper use of the relationship evidence.

In sum, we conclude that the district court did not abuse its discretion by admitting D.J.’s testimony.

II. The district court did not abuse its discretion by denying Boswell’s motion for a mistrial.

Boswell argues that the district court abused its discretion by denying his motion for a mistrial. He argues that a mistrial was “the only appropriate remedy” to cure the prejudice caused by two pieces of testimony: first, testimony by Detective Husarik that he saw Boswell in county-jail custody on August 2, 2022, and, second, D.J.’s testimony that she thought Boswell used drugs while they were dating.

Appellate courts review a district court’s denial of a motion for a mistrial for an abuse of discretion. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). A mistrial should be granted only if “there is a reasonable probability that the outcome of the trial

would be different if the event that prompted the motion had not occurred.” *Id.* (quotation omitted). In the context of prosecutorial misconduct, even “an intentional elicitation of impermissible testimony, although erroneous, will warrant reversal only when it is likely that the impermissible testimony substantially weighed on the jury’s decision.” *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003).

The two pieces of testimony at issue are the following. First, during direct examination of Detective Husarik, the state asked, “[D]id you see Mr. Boswell in the Hennepin County Jail on August 2, 2022?” The detective replied, “Yes.” Boswell’s counsel objected based on relevance, and a bench discussion was held off record. The district court then sustained the objection and directed the jury to disregard the detective’s response. Second, during direct examination of D.J., the state asked her whether she had “an opinion during [her] relationship as to whether [Boswell] was using drugs.” D.J. replied that she did. In response to follow-up questions, she explained that, even though she never used drugs, Boswell would repeatedly accuse her of drug use. She said that “he used to just look different and mean and—just crazy.” She said that, although she doesn’t really know, she “thought he was on something.” She testified that appellant showed signs of someone using marijuana that was “wet,” which, she understood, gives a “different high.” Boswell did not object during this testimony.

At the close of the state’s case, Boswell moved the district court for a mistrial, arguing that the state’s question about Boswell’s jail custody was irrelevant and “only ha[d] potential to unduly persuade through improper means” and that D.J.’s testimony regarding

Boswell's possible drug use was prejudicial. Following a brief break, the district court denied Boswell's motion.

Boswell argues that the two pieces of testimony were "highly prejudicial" because they "improperly told the jury that Boswell was a drug user and was already a criminal who was in jail." He asserts that the district court did not take adequate curative measures to counteract the prejudice because it did not specifically instruct the jury not to use either piece of evidence as character evidence. He also asserts that, because the state's case turned on M.B.'s credibility, the state's case was not strong and there is thus a reasonable possibility that the outcome would have been different without the challenged testimony. We are not persuaded.

With respect to D.J.'s testimony about suspected drug use, as we explained above, the testimony was provided in the context of D.J.'s account of the severe physical abuse, threats, and accusations that gave context to Boswell's treatment of D.J. in their relationship. As we concluded in evaluating its admissibility under section 634.20, the testimony was not substantially more prejudicial than probative. In addition, the district court provided a cautionary instruction to the jury about the proper use of this testimony. For these reasons, we disagree that D.J.'s testimony that she thought Boswell used drugs mandated a mistrial.

With respect to the detective's testimony that he saw Boswell in the county jail, we discern no abuse of discretion in denying a mistrial based on that testimony. "References to a defendant's prior criminal history can be unfairly prejudicial." *McCurry*, 770 N.W.2d at 558. While there is no "general rule that it is prejudicial for the jury to learn that a

defendant is in jail for the crime for which he . . . is on trial,” testimony about a defendant’s incarceration may “damage[] the presumption that [a defendant] [is] innocent until proven guilty.” *Manthey*, 711 N.W.2d at 506.

But, here, the facts support the district court’s determination that the jury’s exposure to the jail-custody testimony did not result in prejudice necessitating a mistrial. The testimony was brief, occupying just three lines of the transcript. The district court immediately directed the jury to disregard Husarik’s response after it sustained Boswell’s objection. And, even if the challenged testimony had not occurred, the record contains detailed, and at times graphic, testimony about Boswell’s abuse of M.B., which was corroborated by photographs of M.B.’s injuries from her forensic examination and the testimony of the nurse who conducted that examination and the officers who saw M.B. on July 22, 2022. *See McNeil*, 658 N.W.2d at 232-33 (holding that district court did not abuse its discretion by denying mistrial based on improperly admitted evidence when other, untainted evidence that the defendant had committed abuse “was overwhelming and included graphic, consistent testimony from [the victim]”). We are not persuaded that there is a reasonable possibility that the outcome of the trial would have been different had the jury not heard that Boswell was in the county jail shortly after M.B. reported his abuse. *See Manthey*, 711 N.W.2d at 506.

III. The district court did not err by instructing the jury that it did not need to unanimously agree on which two of the qualifying acts for stalking were proved beyond a reasonable doubt.

Boswell argues that the district court reversibly erred by instructing the jury that it did not need to unanimously agree on which two of his acts constituted qualifying predicate

criminal acts to support his stalking offense under Minnesota Statutes section 609.749, subdivision 5.

Boswell did not object to the instruction. Appellate courts review an unobjected-to jury instruction for plain error. *State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012). Under the plain-error test, “the appellant must show that there was (1) an error; (2) that is plain; and (3) the error must affect substantial rights.” *State v. Kelley*, 855 N.W.2d 269, 273-74 (Minn. 2014). First, to establish error, the appellant must demonstrate that there has been “a deviation from a legal rule unless the rule has been waived.” *Id.* at 274 (quotation omitted). Though a district court has broad discretion when issuing jury instructions, “a district court abuses that discretion if its jury instructions confuse, mislead, or materially misstate the law.” *Id.* Next, to establish that the error was plain, the appellant must show that the error was “clear or obvious,” which usually occurs “if it contravenes case law, a rule or a standard of conduct.” *State v. Smith*, 901 N.W.2d 657, 661 (Minn. App. 2017) (quotation omitted), *rev. denied* (Minn. Nov. 14, 2017). Last, to establish that a plainly erroneous jury instruction affected substantial rights, the appellant “has the heavy burden of proving that there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury verdict.” *Kelley*, 855 N.W.2d at 283 (quotation omitted). If the appellant satisfies all three prongs, an appellate court “may correct the error only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 274 (quotation omitted). Our analysis begins and ends with the first prong—whether the jury instruction constituted error.

“Jury verdicts in all criminal cases must be unanimous.” *State v. Pendleton*, 725 N.W.2d 717, 730 (Minn. 2007) (citing Minn. R. Crim. P. 26.01, subd. 1(5)). This principle requires jurors to unanimously find that the state has proved every element of a charged offense. *Id.* at 730-31. “[T]he jury must unanimously agree on which acts the defendant committed if each act itself constitutes an element of the crime.” *State v. Stempf*, 627 N.W.2d 352, 355 (Minn. App. 2001). But, if there are “several possible means” for a defendant’s acts to satisfy an element, “the jury need not always decide unanimously which of [those] means the defendant used.” *State v. Ihle*, 640 N.W.2d 910, 918 (Minn. 2002).

Minnesota Statutes section 609.749, subdivision 5, makes it a felony to “engage[] in stalking with respect to a single victim . . . which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim.” Subdivision 5(b) defines “stalking” as “two or more acts within a five-year period that violate or attempt to violate the provisions of any of” a list of specific Minnesota statutes or similar laws in other jurisdictions. This subdivision lists 17 Minnesota offenses, including certain criminal-sexual-conduct, assault, and domestic-assault offenses. Minn. Stat. § 609.749, subd. 5(b)(1)-(17).

In its jury instructions, the district court explained that the state sought to prove stalking “by proving at least two of the following criminal acts”: (1) first-degree criminal sexual conduct and (2) second-degree assault, which were the subject of separate charges

against Boswell; and (3) domestic assault by strangulation and (4) domestic assault, which were not charged.¹ The district court then instructed the jury:

When more than two criminal acts are alleged, in order to find that the State has satisfied this element, you must unanimously find that at least two criminal acts were proven beyond a reasonable doubt, but you need not agree as to which criminal acts were proven beyond a reasonable doubt.

The district court’s instruction followed the pattern jury instruction for stalking. *See* 10 *Minnesota Practice*, CRIMJIG 15.12 (2024). A footnote to that pattern instruction states:

With other statutes that require two or more predicate acts, the Minnesota Supreme Court has held that that the jury need not unanimously agree on the two or more acts, so long as the jury agrees that the state has proven some combination of at least two acts beyond a reasonable doubt.

Id. at n.3. To support this statement, the authors cite two supreme court cases: *State v. Johnson*, 773 N.W.2d 81, 86-87 (Minn. 2009), and *State v. Bustos*, 861 N.W.2d 655, 661 (Minn. 2015). *Id.* Boswell argues that *Johnson* and *Bustos* do not apply, that the pattern jury instruction is incorrect, and that the jury had to unanimously agree on each act that constituted the stalking conduct. The state argues that *Bustos*, which followed *Johnson*, controls and that unanimity on each predicate act was not required.

In *Bustos*, the supreme court analyzed an issue related to the requirements to establish the element of a “past pattern of domestic abuse” to prove first-degree domestic-abuse murder under Minnesota Statutes section 609.185(a)(6) (2014). 861 N.W.2d at 660-

¹ Appellant does not dispute that each of these criminal acts could be a predicate act for stalking.

62. The supreme court interpreted the phrase “past pattern” in the statute to mean “conduct consisting of two or more prior acts that are proximate in time to each other and reflect a regular way of acting.” *Id.* at 661 (quotation omitted). The supreme court stated that, if “the State alleges prior acts in excess of what is necessary to prove a past pattern, not all of the prior acts need to be proven beyond a reasonable doubt because no one predicate act is an element of the offense.” *Id.* It explained that, if the state offers more than two acts to prove pattern domestic abuse, “jurors may disagree about which acts make up the pattern of abuse” but they “must agree that at least two underlying acts of domestic abuse were proven beyond a reasonable doubt, even if they disagree about *which* two acts satisfy that requirement.” *Id.* at 661 n.2 (emphasis added).

Boswell argues that *Bustos* does not apply because that case did not involve the crime of stalking. He also argues that the reasoning of *Bustos* does not fit this case. Boswell acknowledges that, with respect to first-degree domestic-abuse murder, “it makes sense to consider that the ‘pattern’ is a single element more in line with ‘means’ than ‘acts.’” But, he argues, because “stalking” is defined as “two or more ‘acts’ that violate certain law,” the acts are the crime itself and do not “elevate the degree of another crime.” Thus, he concludes, “multiple violations cannot be considered a single element that jurors do not need to agree on.” The argument is unconvincing.

As explained in *Bustos*, an element of first-degree domestic-abuse murder is a “pattern of domestic abuse,” which is established by “two or more prior acts” of domestic abuse. *Id.* at 661. Similarly, an element of felony stalking is that the defendant engaged in “stalking,” which is established by “two or more acts,” within a defined period, that violate

or attempt to violate any of 17 specified laws. Minn. Stat. § 609.749, subd. 5(b).² In both cases, the element is the sum total of predicate acts and the predicate acts are the means of satisfying the element. *See Ihle*, 640 N.W.2d at 918. *Bustos* therefore controls. As a result, to find a person guilty of felony stalking when more than two predicate acts are alleged, jurors must unanimously agree “that at least two underlying acts . . . were proven beyond a reasonable doubt” but they need not unanimously agree “about *which* two acts satisfy that requirement.” *Bustos*, 861 N.W.2d at 661 n.2 (emphasis added). The district court’s jury instruction was not erroneous, and appellant’s plain-error challenge fails on the first prong.

IV. The district court did not err under section 609.04 by entering convictions for stalking, first-degree criminal sexual conduct, and second-degree assault.

Boswell argues that the district court erred by entering convictions for stalking, first-degree criminal sexual conduct, and second-degree assault because the latter two are included offenses of stalking. He contends that his convictions for criminal sexual conduct and assault should be vacated.

Under Minnesota Statutes section 609.04, a defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. An included offense is defined in part as “a crime necessarily proved if the crime charged were

² As noted above, the offense of felony stalking also includes other elements, including that the person engaged “in stalking with respect to a single victim or one or more members of a single household,” that the person knew that the stalking “would cause the victim . . . to feel terrorized or to fear bodily harm,” and that the stalking did cause that reaction. *Id.*, subd. 5(a).

proved.” *Id.*, subd. 1(4). A crime is necessarily proved “if it is impossible to commit the greater offense without committing the lesser offense.” *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006). To determine whether a charged offense is an included offense, courts “must look at the statutory definitions rather than the facts in a particular case.” *State v. Gisege*, 561 N.W.2d 152, 156 (Minn. 1997) (quotation omitted). Boswell argues that the offenses of criminal sexual conduct and assault are included crimes of stalking because they “were proven in order to convict Boswell of stalking.”

Looking only at the elements of the offenses—not the facts of this particular case—we disagree that criminal sexual conduct and assault are necessarily proved when stalking is proved. Among other elements, felony stalking requires proof of “stalking”—which is defined as “two or more acts . . . that violate or attempt to violate” any of 17 enumerated laws. Minn. Stat. § 609.749, subd. 5(b). Because “stalking” can be established based on conduct that violates or attempts to violate any of the enumerated laws, it is possible to prove the stalking element without proving that a defendant committed criminal sexual conduct or assault. *See Bertsch*, 707 N.W.2d at 664. As a result, criminal sexual conduct and assault are not included offenses of stalking. The district court did not err by entering convictions for all three offenses.

V. The district court did not err under section 609.035 by imposing separate sentences for stalking, first-degree criminal sexual conduct, and second-degree assault.

Boswell argues that the district court erred by imposing separate sentences for his convictions for stalking, first-degree criminal sexual conduct, and second-degree assault because they were part of a single behavioral incident. He argues that the district court

should have sentenced him for only one of these convictions, and he suggests that the appropriate conviction on which to sentence him is the stalking offense. The state argues that the district court's imposition of sentences for each of the convictions did not violate section 609.035 because each offense constituted a separate behavioral incident.³

Minnesota Statutes section 609.035, subdivision 1, provides that, “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.” Section 609.035 “generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident.” *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted). It “contemplates that a defendant will be punished for the most serious of the offenses arising out of a single behavioral incident because imposing up to the maximum punishment for the most serious offense will include punishment for all offenses.” *Id.* (quotation omitted).

Whether offenses are part of a single behavioral incident “depends on the facts of the particular case.” *State v. Hawkins*, 511 N.W.2d 9, 13 (Minn. 1994). Offenses are part of a single behavioral incident if they “occurred at substantially the same time and place and were motivated by a single criminal objective.” *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). The state bears the burden to prove, “by a preponderance of the evidence, that a defendant’s offenses were not part of a single behavioral incident.” *State v. Bakken*,

³ Although appellant did not raise this issue in the district court, “[a] defendant does not waive relief from multiple sentences or convictions arising from the same behavioral incident by failing to raise the issues at the time of sentencing.” *State v. Clark*, 486 N.W.2d 166, 170 (Minn. App. 1992) (citing *Ture v. State*, 353 N.W.2d 518, 523 (Minn. 1984)).

883 N.W.2d 264, 270 (Minn. 2016). “Whether the offenses were part of a single behavioral incident is a mixed question of law and fact, so [appellate courts] review the district court’s findings of fact for clear error and its application of the law to those facts de novo.” *Id.* “Determining whether multiple offenses are part of single behavioral incident is not a ‘mechanical’ exercise, but rather requires an examination of all the facts and circumstances.” *Id.*

Boswell does not individually address the time, place, and criminal-objective factors. Instead, he argues that, because the offenses of criminal sexual conduct and assault were used by the state to prove the offense of stalking, all three offenses were part of a single behavioral incident. He relies on *State v. Mullen*, 577 N.W.2d 505 (Minn. 1998).

In *Mullen*, the defendant was convicted of and sentenced for offenses involving two incidents that took place almost a year apart. 577 N.W.2d at 506. In the first incident, which occurred in April 1995, Mullen broke into his ex-girlfriend’s apartment and physically attacked her. *Id.* at 506. He was charged with burglary and assault. *Id.* at 507. In the second incident, which occurred in March 1996, shortly before trial on the first incident, the defendant repeatedly phoned his ex-girlfriend over the course of a few hours, “accusing her of turning his new girlfriend against him,” and smashed the window of her car. *Id.* at 507. He was charged with criminal damage to property and stalking. *Id.* For the stalking charge, the jury was permitted to consider acts from both time periods. *Id.* at 511. Mullen was convicted of and sentenced for all four offenses. *Id.* at 509. On appeal, he argued that he could not be sentenced for all four offenses because the offenses were part of a single behavioral incident. *Id.* at 511.

The supreme court decided that Mullen could receive separate sentences for the crimes committed in the April 1995 incident based on the burglary exception provided in section 609.035. *Id.* But the supreme court concluded that Mullen could not receive separate sentences for criminal damage to property and stalking because the crimes shared a “unity of time, place, and criminal objective.” *Id.* at 511-12. Specifically, the court explained, the “March 1996 conduct constitute[d] a single behavioral incident because the telephone calls and breaking of the window occurred within a few hours and were motivated by a continuous intent to harass [the victim].” *Id.* at 511.

Mullen does not create a categorical rule that offenses that may constitute predicate acts for stalking always arise out of the same behavioral incident as stalking. Rather, the supreme court assessed the time, place, and criminal objective of the two offenses and concluded that, because the defendant’s harassing phone calls and damage to property “occurred within a few hours” at the victim’s apartment “and were motivated by a continuous intent to harass,” they constituted a single behavioral incident. *Id.* The facts and circumstances here are different.

We first address the time of the offenses. The parties do not dispute the offense dates: (1) the first-degree criminal sexual conduct occurred around June 19, 2022, when Boswell forced M.B. to perform oral sex on a man whom Boswell brought to her apartment; (2) the second-degree assault occurred on July 21, 2022, when Boswell fired a gun near M.B.; and (3) the stalking charge occurred during a timeframe from approximately February 1 to July 22, 2022. The criminal sexual conduct and assault offenses occurred on distinct dates over a month apart and so do not share a unity of time. But, Boswell argues,

because those two offenses were used to prove the stalking charge, all three offenses were part of a single behavioral incident.

Even assuming that the jury relied on those two offenses as the predicate acts for stalking—instead of the alternative predicate acts of domestic assault by strangulation or domestic assault for which Boswell was not charged—we disagree with the mechanical rule proposed by Boswell. In some cases, predicate acts and stalking may be part of a single behavioral incident based on the specific facts and circumstances of the case. *Mullen* is an example. So, too, is *State v. Jones*, in which the defendant sent 33 text messages to the victim in violation of a protective order over a single two-and-a-half hour period, and the supreme court concluded that the predicate acts and the stalking offense were all part of a single behavioral incident. 848 N.W.2d at 533-34. But, here, the offenses did not occur in such a tight and connected timeframe. The stalking offense happened through conduct that occurred over a six-month period in the context of an ongoing relationship between Boswell and the victim, while the criminal sexual conduct and the assault with a gun were discrete incidents occurring on separate, individual dates. We do not agree that, because the stalking offense could be predicated on the two discrete offenses, they all share a unity of time.

Second, we consider the place of the offenses. According to M.B.'s testimony, many of the acts underlying the offenses occurred in her apartment, including the criminal sexual conduct and many of the other instances of domestic abuse, including strangulation, that are relevant to the stalking offense. The second-degree assault occurred elsewhere, near a liquor store where Boswell took M.B. out of a vehicle and shot near her. While many of

the acts occurred in M.B.’s apartment, all three crimes for which Boswell was sentenced did not occur in the same place.

Third, we consider whether Boswell acted with a single criminal objective. When determining whether separate offenses “were committed with a single criminal objective, [appellate courts] examine the relationship of the crimes to each other.” *Id.* at 533. “Broad statements of criminal purpose do not unify separate acts into a single course of conduct.” *Id.* Boswell asserts generally that the three offenses shared a common criminal objective, but he does not identify what that criminal objective was, beyond calling the criminal sexual conduct and assault “stalking acts.”

As the state argues, the crimes of criminal sexual conduct and assault had different objectives—the criminal sexual conduct was motivated by Boswell’s desire for financial and sexual gain, unlike his shooting a gun near M.B., which apparently was motivated by a desire to control or frighten M.B. The state notes that Boswell may be arguing that the four possible predicate acts underlying his stalking offense “shared a similar criminal desire to abuse [M.B.] or exercise control over her,” but, it argues, while such a general objective could show the *same* criminal objective, it does not mean that the offenses had a *single* criminal objective. We agree.

In *Bakken*, the supreme court concluded that the fact that the defendant possessed illegal pornographic works on multiple occasions with the same objective of satisfying his sexual urges did not mean that he committed the crimes “to attain a *single* criminal objective.” 883 N.W.2d at 271. And, in *State v. Soto*, the supreme court concluded that a cocaine dealer’s “objective of selling drugs to relieve financial hardship” did not mean that

separate cocaine sales shared a “single criminal objective” because a “criminal plan of obtaining as much money as possible is too broad an objective to constitute a single criminal goal within the meaning of section 609.035.” 562 N.W.2d 299, 304 (Minn. 1997). Similarly, here, we determine that a general “stalking” objective or a desire to abuse or control M.B. are too broad and nonspecific to demonstrate a single criminal objective for all of Boswell’s relevant acts under section 609.035.

In sum, we conclude that the state met its burden to prove by a preponderance of the evidence that Boswell’s offenses did not constitute a single behavioral incident. *See Bakken*, 883 N.W.2d at 270. Therefore, the district court did not err by imposing a separate sentence for each offense.

VI. Boswell is not entitled to relief on any claim in his pro se supplemental brief.

Boswell makes several arguments in his pro se supplemental brief.

First, Boswell raises three issues related to the jury: (1) the jury was all White; (2) jurors stated during voir dire that they had “already pre-judged” him due to the nature of his crimes; and (3) a witness approached a juror outside the courtroom and encouraged the juror to find Boswell guilty because he is “a bad man.” Boswell does not identify any part of the record related to these issues nor does he cite any legal authority,⁴ but we determine from the trial transcript that Boswell’s arguments lack merit.

⁴ “Pro se litigants are generally held to the same standards as attorneys.” *State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006), *rev. denied* (Minn. Jan. 24, 2007). If a brief does not cite legal authority to support an allegation it raises, the allegation will be deemed forfeited. *Id.* “Finally, if an allegation is outside of the record, it must be disregarded.” *Id.*

Regarding the jury's racial composition, at trial Boswell's counsel objected that Boswell was denied a jury of his peers because Boswell is African American and the panel of potential jurors had no African American members. The state responded that Boswell bore the burden of proving "purposeful and systemic exclusion of a certain portion of the population" from the jury pool. Relying on the test set forth in *State v. Williams*, 525 N.W.2d 538, 542 (Minn. 1994), the district court determined that Boswell failed to meet his burden to prove that underrepresentation in the panel of potential jurors "was the result of a systematic exclusion of the group in question from the jury selection process." We discern no error in the district court's determination.

Boswell's second and third jury-related arguments are also unavailing. While Boswell does not identify which juror "pre-judged" him, it appears he may be referring to prospective juror nine, who stated during voir dire that she was inclined to believe that Boswell was guilty because of the number of charges against him. The prospective juror clarified that her response was an initial gut reaction and that she believed she could be neutral as a juror, but, in any event, she did not serve on the jury. Lastly, an alternate juror was approached outside the courtroom by a witness who then made prejudicial statements about Boswell, but the juror disclosed the statements to the district court and was excused before deliberations began. We discern no error by the district court.

Second, Boswell challenges the sufficiency of the evidence to support his conviction for illegal possession of a weapon. He appears to contend that the evidence was insufficient because no gun was entered into evidence. But there was other evidence of his gun possession, including M.B.'s testimony that he shot a gun near her and pressed a gun

against her body. Assuming that the factfinder believed M.B.’s testimony, it is sufficient to prove beyond a reasonable doubt that Boswell possessed a gun, even though the gun was not introduced into evidence. *See State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (explaining that “[t]he evidence must be viewed in the light most favorable to the verdict” on review of sufficiency of the evidence).

Third, Boswell also claims generally that he was denied his “rights to due process and a fair trial.” This is a bare assertion that is too nonspecific to enable our review. *See Meldrum*, 724 N.W.2d at 22.

Fourth, Boswell alleges that he received ineffective assistance of counsel. “Both the United States and Minnesota Constitutions guarantee a criminal defendant the right to effective assistance of counsel.” *State v. Jones*, 977 N.W.2d 177, 193 (Minn. 2022) (quotation omitted). When an ineffective-assistance-of-counsel claim can be resolved based on the trial record, the claim must be brought on direct appeal. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). But, when a claim requires examination of evidence outside of the record or additional fact-finding, the claim is better brought in a postconviction proceeding. *See id.* While Boswell provides some details supporting his claim, the evidence on which his claim relies is not part of the record. We therefore deny this claim without prejudice to Boswell’s right to pursue it in a postconviction proceeding. *See State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007) (denying defendant’s ineffective-assistance-of-counsel claim when the claim required examination of facts not in the record and preserving defendant’s right to raise the claim in a postconviction proceeding).

Finally, Boswell makes four arguments that, like his ineffective-assistance claim, require further development of the record for appellate review. These are: (1) that the district court misspelled his middle name; (2) that he was not made aware of “important court date[s]” in these proceedings; (3) that pretrial discovery was defective; and (4) that the district court violated his rights by not holding certain hearings prior to his jury trial and by not providing him an opportunity to make a speedy-trial request. Because the record is limited on these issues and further development of the record may be possible in postconviction proceedings, we deny the claims without prejudice to Boswell’s right to raise them in a postconviction proceeding. *See id.*

DECISION

The district court did not abuse its discretion by admitting D.J.’s testimony as relationship evidence under Minnesota Statutes section 634.20. Nor did it abuse its discretion by denying Boswell’s motion for a mistrial. The district court did not err in its unanimity instructions regarding the element of “stalking” under Minnesota Statutes section 609.749, subdivision 5. Regarding sentencing, the district court did not err under Minnesota Statutes section 609.035 by imposing separate sentences for first-degree criminal sexual conduct, second-degree assault, and stalking because the offenses did not arise out of a single behavioral incident. The district court also did not err by entering separate convictions for all three of those offenses because neither first-degree criminal sexual conduct nor second-degree assault are included offenses of stalking under

Minnesota Statutes section 609.749, subdivision 5. Finally, Boswell failed to establish any claim for which he is entitled to relief in his pro se supplemental brief. We therefore affirm.

Affirmed.