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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1595**

State of Minnesota,
Respondent,

vs.

Nadeem Khalid,
Appellant.

**Filed September 15, 2025
Affirmed in part, reversed in part, and remanded
Bratvold, Judge**

Sherburne County District Court
File No. 71-CR-23-1302

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

Dawn Nyhus, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

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

Considered and decided by Harris, Presiding Judge; Bjorkman, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

This direct appeal challenges the final judgments of conviction for stalking and violating an order for protection (OFP). Appellant argues that the district court erred by (1) denying his motion to present evidence of an alternative perpetrator, (2) entering

judgments of conviction for both offenses, and (3) sentencing appellant for both offenses. We conclude that the district court did not abuse its discretion on the alternative-perpetrator issue because appellant supported his motion with summarized evidence that did not have an inherent tendency to connect a third party to the charged offenses. We also conclude that appellant could be convicted of both offenses because an OFP violation is not a lesser-included offense of stalking. But we conclude that the district court erred by imposing sentences for both convictions because they arose out of the same behavioral incident. Therefore, we affirm in part, reverse in part, and remand for resentencing.

FACTS

In October 2023, respondent State of Minnesota charged appellant Nadeem Khalid with stalking under Minn. Stat. § 609.749, subd. 5(a) (2022), threats of violence under Minn. Stat. § 609.713, subd. 1 (2022), and violation of an OFP under Minn. Stat. § 518B.01, subd. 14(c) (2022). The complaint alleged that Khalid violated an OFP directing him to have no contact with C.H., who is his former girlfriend, when he texted C.H. between September 22 and October 3, 2023.

The district court presided over Khalid's jury trial from May 28 to June 3, 2024. On the first day of trial, the district court denied Khalid's request to offer evidence to support an alternative-perpetrator defense, concluding that Khalid's offer of proof did not have an inherent tendency to connect a third party, Khalid's brother, to the charged offenses.

During trial, the state offered testimony from C.H., an investigative analyst, two social workers, three law-enforcement officers, a detective, a criminal intelligence analyst,

and a probation officer. After the state rested, Khalid did not offer any evidence. The following summarizes the evidence relevant to this appeal.

C.H. testified and agreed that she “became connected with” Khalid when she married his brother, N.K. (brother). C.H. had three children in common with brother, and they divorced “[o]ver nine years” before trial. Six months after C.H. and brother divorced, C.H. and Khalid began a romantic relationship, which continued “for almost nine years.”

C.H. testified that, in August 2023, she found “meth pipes” in the garbage. C.H. confronted Khalid about the pipes and told him to leave their home in Elk River. After he left, Khalid began verbally threatening C.H., who reported the threats to law enforcement and petitioned for an OFP. After the district court entered an OFP that prohibited Khalid from contacting her, C.H. received emails from Khalid stating that “he was in the hospital” for heart surgery and asking to see one of C.H.’s children. Khalid continued to text and call C.H., which C.H. reported to law enforcement.

C.H. testified that Khalid sent these texts and calls, adding that she (1) knew “his voice” on the recorded voicemails and two of the phone numbers he used to contact her and (2) recognized the content of the messages, which referenced facts Khalid knew and matched Khalid’s phrasing. For example, C.H. knew that the messages were from Khalid because “he misspells [her] name” and refers to his “open heart surgery” in the messages. C.H. acknowledged that she did not recognize some of the phone numbers, explaining that Khalid used “Google [Voice] numbers.”

The district court received copies of the texts and voicemails. The screenshots of texts sent to C.H. were dated September 28-30 and October 3, 2023. The district court also received undated voicemail recordings and copies of C.H.'s call records.

An Elk River police officer testified that he spoke with C.H. about the reported OFP violation on September 30, 2023. While the officer was looking at C.H.'s phone, "her phone lit up and it said Nadeem Khalid Google number." The officer answered the phone on speakerphone, and the caller said, "Hello." When the officer identified himself, the caller hung up. C.H. told the officer that the caller's voice was Khalid's.

An Elk River detective testified that he called Khalid on October 3, 2023, and a recording of that phone call was received into evidence. In the recording, which was played for the jury, Khalid admitted he "texted [C.H.] like a week ago or . . . like two weeks ago, about" the OFP. Khalid also stated that brother sent C.H. the harassing text messages. Khalid, however, did not "know for a hundred percent" that brother sent the text messages because Khalid did not "talk to [brother] either." The detective testified that two of the phone numbers used to contact C.H. by text "were confirmed to belong to [Khalid]."

The jury found Khalid guilty of stalking and violating an OFP and not guilty of threats of violence. In July 2024, the district court entered judgments of conviction for both stalking and violating an OFP and sentenced Khalid to 18 months in prison for stalking and 364 days in jail for violating an OFP.

Khalid appeals.

DECISION

I. The district court did not abuse its discretion by denying Khalid's request to present alternative-perpetrator evidence.

Appellate courts “review the evidentiary rulings of the district court for an abuse of discretion, even when it is claimed that the exclusion of evidence deprived the defendant of his constitutional right to present a complete defense.” *State v. Carbo*, 6 N.W.3d 114, 123 (Minn. 2024) (quotation omitted). If the district court’s evidentiary ruling is erroneous “and the error reaches the level of a constitutional error, such as denying the defendant the right to present a defense,” appellate courts consider whether the error was harmless beyond a reasonable doubt. *State v. Smith*, 876 N.W.2d 310, 331 (Minn. 2016) (quotation omitted).

The purpose of the alternative-perpetrator defense is not to establish “the alternative perpetrator’s guilt, but to create a reasonable doubt as to the defendant’s guilt.” *State v. Atkinson*, 774 N.W.2d 584, 590 (Minn. 2009). The United States and Minnesota Constitutions both guarantee a criminal defendant’s right to present a complete defense. U.S. Const. amend. XIV; Minn. Const. art. I, § 7; *see also Atkinson*, 774 N.W.2d at 589 (“A defendant has the constitutional right to present a complete defense.”). This right to present a complete defense includes “the right to introduce evidence showing that an alternative perpetrator committed the crime.” *Carbo*, 6 N.W.3d at 123.

But a defendant’s right to a complete defense “is not absolute.” *State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010). “[E]vidence proffered in support of the [alternative-perpetrator] defense must still comply with the rules of evidence.” *State v.*

Glover, 4 N.W.3d 124, 136 (Minn. 2024) (quotation omitted). The supreme court in *State v. Hawkins* established a two-step process to determine the admissibility of alternative-perpetrator evidence. 260 N.W.2d 150, 158-59 (Minn. 1977). First, a defendant must offer foundational evidence that has “an inherent tendency to connect [a third party] with the actual commission of the crime.” *Id.* at 159 (quotation omitted). Second, “a court considers whether the evidence in question is admissible under the ordinary rules of evidence.” *State v. Woodard*, 942 N.W.2d 137, 142 (Minn. 2020) (quotation omitted); *see, e.g., Carbo*, 6 N.W.3d at 126 (considering the admissibility of alternative-perpetrator evidence under Minn. R. Evid. 412’s rape-shield provision); *Huff v. State*, 698 N.W.2d 430, 438 (Minn. 2005) (considering the admissibility of evidence under Minn. R. Evid. 404(b) to show a third party’s prior wrongful conduct to advance an alternative-perpetrator defense). If both steps are satisfied, then the defendant may present “evidence of a motive of the third person to commit the crime, threats by the third person, or other miscellaneous facts which would tend to prove the third person committed the act.” *Hawkins*, 260 N.W.2d at 159 (footnotes omitted).

Before trial, Khalid filed a “notice of defenses,” indicating his intent to introduce evidence of an alternative perpetrator and identifying brother as the alternative perpetrator. In his second amended notice, Khalid’s written offer of proof summarized the following evidence:

- Brother had “a relationship and child in common” with C.H.
- Khalid “told the investigator” that brother was sending the text messages to C.H., that brother and C.H. “had a huge conflict in the past,” and that C.H. “keeps dragging [Khalid] into this.”

But “law enforcement conducted no investigation into” brother.

- Brother “had access to [Khalid’s] phones and the ability to commit this offense.”
- In the past, Khalid was “falsely accused of stalking by C.H. . . . for an offense actually committed by [brother],” leading to charges that were “dismissed based on” C.H.’s affidavit stating that brother “committed the stalking conduct,” not Khalid.
- Brother was convicted of stalking and making obscene or harassing telephone calls for “similar conduct” against C.H., including sending C.H. “derogatory” and “threatening” text messages and expressing “anger about C.H.’s relationship” with Khalid.
- Brother “continues to stalk and harass C.H.” and was charged three times in 2024 for contacting C.H. in violation of a domestic-abuse no-contact order (DANCO).
- Brother “perpetrated identity theft, fraud, and theft against [Khalid]” after Khalid was arrested on October 27, 2023. Brother “looks strikingly similar” to Khalid, tried to access Khalid’s property from an assisted living facility where Khalid was staying, and recovered Khalid’s vehicle from an impound lot. Brother also accessed Khalid’s bank account and made “over 50 fraudulent withdrawals” from that account.

On the first day of trial, the district court denied Khalid’s request to present evidence that brother committed the crimes against C.H. The district court acknowledged that Khalid’s offer of proof had some inherent tendency to connect brother with C.H. and to establish brother’s “motive to harass” C.H. But the district court determined that the offer of proof established “no connection between [brother] and . . . [the phone] numbers” used to contact C.H. for the charged offenses and that brother’s connection to “other crimes” was not enough to link him to “this crime.” The district court concluded that the evidence

did not “show there’s an inherent tendency to connect the alternative individual, in this case [brother], with the commission of this crime.”¹

Under step one as explained in *Hawkins*, “a court must focus on the evidence, not the assertions, contained in the proffer.” *Woodard*, 942 N.W.2d at 142 (quotation omitted). “This requirement avoids the use of bare suspicion and safeguards the third person from indiscriminate use of past differences with the [complainant].” *Id.* (quotation omitted). And evidence of the third person’s “motive alone does not have the inherent tendency to connect [them] to the commission of the crime.” *Troxel v. State*, 875 N.W.2d 302, 309 (Minn. 2016) (quotation omitted).

Khalid argues that the proffered evidence “showed that [brother] possessed a motive to falsely implicate [Khalid] for his criminal conduct given [Khalid’s] long-term romantic relationship with [brother’s] ex-wife and the mother of his children.” Khalid contends that the evidence established that brother “had a tendency to commit the exact criminal acts [Khalid] was accused of committing in this case—namely, repeatedly sending harassing text messages and making harassing phone calls, stalking, and violating restraining orders”—against C.H. Khalid also emphasizes that brother “had been charged in three different cases for violating a court order prohibiting him from contacting C.H.”—listing

¹ The district court noted that its ruling did “not limit [Khalid’s] ability to challenge the state’s evidence” and argue “that anyone could access these numbers and that there’s holes in the state’s case.”

three district court file numbers—and argues that this shows brother “continued to harass and stalk C.H. around the same time [Khalid] purportedly did the same.”²

The state argues that “nothing about [brother’s] prior marriage or children in common with C.H. is characteristic of the charged stalking conduct” and thus the offer of proof “lacks the inherent tendency to connect [brother] to the charged offenses.”³ The state contends that Khalid’s “bare assertion” that brother had access to Khalid’s devices and the ability to commit the offenses, “without any evidence to show what actually happened,” also lacked “an inherent tendency to connect [brother] with the charged stalking conduct.” The state maintains that the totality of the evidence offered “failed to inherently connect [brother] to the charged crime.”

² The second amended notice of defenses states that brother was “arrested and charged three times in 2024” for violating a DANCO and lists the district court case numbers. The exact dates of these alleged violations, however, were not included in Khalid’s proffer.

Khalid’s brief to this court adds that the record shows brother “unexpectedly reinitiated communication with C.H. after having been absent from her life and living in another state during the preceding two years.” This evidence, however, was not included in Khalid’s offer of proof and was not argued to the district court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that, generally, appellate courts do not consider matters not argued to the district court). We therefore do not consider this evidence when reviewing the district court’s decision.

³ The state urges this court not to consider brother’s motive to commit the crime when analyzing step one of the *Hawkins* test. The state argues that motive evidence “only becomes relevant after a defendant lays the ‘necessary foundation’ of facts inherently tending to connect the identified third party with the crime.” We disagree. Courts may consider a third party’s motive under step one, but motive *alone* is not enough to connect the third party to a crime. *See Troxel*, 875 N.W.2d at 309 (determining that a third party’s “purported motive” was unconvincing in the absence of “any overt indication of violence, threats, anger, jealousy, or frustration”).

First, we acknowledge that Khalid's offer of proof included evidence of brother's motive to harass C.H. based on brother's past convictions for stalking and harassing C.H. and the 2024 charges for contacting C.H. in violation of a DANCO. We also recognize that both Khalid and brother had romantic relationships with C.H., who is the mother of brother's three children. But Khalid's offer of proof shows that brother's conduct targeted C.H.—not that brother targeted Khalid. In other words, Khalid offered evidence of anger between brother and C.H. but no antipathy between brother and Khalid. We conclude that this evidence, at best, slightly suggests brother's motive to implicate Khalid for the charged offenses.

Second, even if we assume that Khalid offered evidence of brother's motive to frame him, evidence of motive is not enough to inherently connect brother to the commission of the charged offenses. *See Troxel*, 875 N.W.2d at 309. In his offer of proof, Khalid alleged that brother "had access to [Khalid's] phones and the ability to commit the offense." During district court proceedings, however, Khalid's attorney conceded that nobody saw brother "in possession of [Khalid's] phones or having used [the Google Voice] numbers for any purpose." Khalid's attorney also conceded that there was no evidence that brother used the disputed Google Voice numbers when C.H. allegedly was contacted in violation of a DANCO. Thus, Khalid did not offer any evidence connecting brother to the events leading up to the harassing conduct in September and October 2023.

Third, although Khalid offered evidence that brother stole his identity, this occurred after Khalid's arrest. Thus, the identity-theft evidence does not connect brother to the commission of the charged offenses against C.H. because brother allegedly stole Khalid's

identity *after* Khalid’s arrest and *after* the charged offenses occurred. *See State v. Nissalke*, 801 N.W.2d 82, 102 (Minn. 2011) (“[B]are assertions as to what could have happened are not evidence and do not have an ‘inherent tendency’ to connect [the third party] to the crime.”). The totality of Khalid’s offer of proof is insufficient to connect brother to the alleged criminal conduct between September 22 and October 3, 2023.

We conclude that the district court did not abuse its discretion on step one of the *Hawkins* test. Therefore, we need not consider the parties’ arguments about step two. *See Woodard*, 942 N.W.2d at 142 (affirming the district court’s decision to exclude alternative-perpetrator evidence and stating that, “[i]f the defense does not lay the proper *Hawkins* foundation, the court need not move to the second step of the process outlined in *Hawkins*”).

II. The district court did not err by entering convictions for both offenses because the OFP violation is not a lesser-included offense of stalking.

“Upon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2022). A lesser-included offense is, among other things, “a crime necessarily proved if the [greater offense] were proved.” *Id.*, subd. 1(4). And 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 crime is a lesser-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). Appellate courts review this issue de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

Khalid argues that the district court erred by entering a conviction for the OFP violation because it “was an ‘included offense’ of [his] stalking offense.” Khalid contends that “by finding [he] committed the stalking offense, the jurors necessarily determined [he] also violated an OFP.” To support this argument, Khalid notes that the OFP violation was a predicate offense for his stalking charge and that the district court “read the elements of OFP violation when it gave the stalking instruction.”

The state counters that “OFP violation is not an included offense of stalking.” The state maintains that, “because one can commit stalking through conduct violating (or attempting to violate)” various laws, “proof of stalking does not necessarily prove that the defendant also violated an OFP.”

The state relies on *State v. Boswell*, in which this court concluded that first-degree criminal sexual conduct and second-degree assault are not lesser-included offenses of stalking. 20 N.W.3d 640, 658 (Minn. App. 2025). We reasoned that these offenses are not “necessarily proved when stalking is proved” because stalking “can be established based on conduct that violates or attempts to violate any of the enumerated laws” in the stalking statute and it is “possible to prove the stalking element without proving that a defendant committed criminal sexual conduct or assault.” *Id.*

Thus, the issue is whether “it is impossible to commit the greater offense” of stalking “without committing the lesser offense” of violating an OFP. *Bertsch*, 707 N.W.2d at 664. Looking solely at the elements of the offenses, we conclude that violating an OFP is not necessarily proved when stalking is proved. Stalking requires “two or more acts within a five-year period” that “violate or attempt to violate” any of 17 laws listed in the statute.

Minn. Stat. § 609.749, subd. 5(b)(1)-(17) (2022) (listing various offenses, including burglary, domestic assault, violation of an OFP, and damage to property). Because there are 16 crimes other than violating an OFP that may support a stalking offense, a defendant could be convicted of stalking even if they never violate an OFP. *Id.* An OFP violation is therefore not “necessarily proved” when stalking is proved and is not a lesser-included offense of stalking. Minn. Stat. § 609.04, subd. 1(4).⁴

Because the OFP violation is not a lesser-included offense of stalking, the district court did not err by entering convictions against Khalid for both offenses.

III. The district court erred by imposing sentences for both offenses because the conduct underlying the offenses arose out of a single behavioral incident.

Generally, “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.” Minn. Stat. § 609.035, subd. 1 (2022). Thus, a district court generally cannot impose “multiple sentences, even concurrent sentences, for two or more offenses that were committed as part

⁴ Though not directly analyzed by either party, a lesser-included offense can also be “a lesser degree of the same crime.” *Id.*, subd. 1(1). “If the lesser offense is a lesser degree of the same crime or a lesser degree of a multi-tier statutory scheme dealing with a particular subject, then it is an ‘included offense’ under section 609.04.” *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995).

In *State v. Bradley*, the supreme court considered whether domestic assault is a “lesser degree” of second-degree assault. 4 N.W.3d 105, 111-12 (Minn. 2024). The supreme court determined that, even though both offenses are, “by their very names, assaults,” unambiguous statutory language shows that the legislature “chose to place domestic assault outside the multiple degree scheme set forth” for criminal assault. *Id.* at 113. Domestic assault is therefore not a “lesser degree” of second-degree assault. *Id.*

Similarly, an OFP violation under section 518B.01, subdivision 14(c), and stalking under section 609.749, subdivision 5(a), are in two different statutory schemes. Therefore, an OFP violation is not a “lesser degree” of stalking.

of a single behavioral incident.” *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted). Two 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). “[P]redicate acts and stalking may be part of a single behavioral incident based on the specific facts and circumstances of the case.” *Boswell*, 20 N.W.3d at 660-61 (concluding that stalking, criminal-sexual-conduct, and assault offenses were not part of the same behavioral incident because they occurred at different times and places and had different criminal objectives).

“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.* at 659 (quotation omitted). 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*, 883 N.W.2d 264, 270 (Minn. 2016).

Khalid argues that the district court erred by imposing separate sentences for both offenses because they were part of a single behavioral incident. Khalid reasons that, “by contacting C.H., [his] conduct constituted both felony stalking and an OFP violation.” The state concedes that “the facts of Khalid’s case prohibit multiple sentences” because the “crimes were part of a single behavioral incident.”

In *Jones*, Jones was convicted of stalking and violating an OFP for sending 33 text messages to his wife over a 2.5-hour period. 848 N.W.2d at 532. The district court imposed sentences for both offenses. *Id.* On appeal, the supreme court determined that the offenses

occurred at substantially the same time and place because they were both based on the text messages sent within the same 2.5-hour period and the wife received all the messages while she was at work. *Id.* at 533. The supreme court also determined that both offenses were motivated by Jones’s “singular intent to intimidate and harass” his wife and that this intent was “sufficiently specific to constitute a single criminal objective.” *Id.* The supreme court reversed and remanded for resentencing, concluding that the offenses “involved a single course of conduct.” *Id.* at 534, 538.

This case is like *Jones*. Khalid’s convictions rest on evidence of the text messages and voicemails that Khalid sent to C.H. between September 22 and October 3, 2023.⁵ The parties’ precise location when each message was sent is not in the record, but C.H. lived in Elk River throughout the charged conduct. Also, these messages and calls were sent at substantially the same time. And Khalid intended to harass C.H. when he sent her the text messages and voicemails over a ten-day period. This intent to harass “is sufficiently specific to constitute a single criminal objective.” *Id.* at 533. Because Khalid’s offenses “occurred at substantially the same time and place and were motivated by a single criminal objective,” we conclude that the conduct underlying Khalid’s convictions for stalking and violating an OFP were part of a single behavioral incident. *Id.*

Thus, the district court erred when it imposed sentences for both convictions. Section 609.035 contemplates that “a defendant will be punished for the most serious of

⁵ The district court instructed the jury that stalking “means two or more criminal acts within a five-year period” and that the state sought “to meet this element by proving the criminal acts of violation of an [OFP]” between September 22 and October 3, 2023.

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.” *State v. Kebaso*, 713 N.W.2d 317, 322 (Minn. 2006) (quotations omitted). We therefore reverse and remand for the district court to vacate Khalid’s sentence for the OFP violation as the less serious offense.

Affirmed in part, reversed in part, and remanded.