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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-326

State of Minnesota,
Respondent,

vs.

Steven Scott Samuelson,
Appellant.

Filed July 16, 2012
Affirmed
Collins, Judge[*]

Itasca County District Court
File No. 31-CR-10-169

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota; and

Todd S. Webb, Itasca County Attorney's Office, Grand Rapids, Minnesota (for respondent)

Andrew R. Pearson, Bradshaw & Bryant, PLLC, Waite Park, Minnesota; and

Jennifer H. Chaplinski, Chaplinski Law Office, St. Cloud, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Collins, Judge.

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

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant challenges his multiple convictions for violating a domestic-abuse no-contact order (DANCO), arguing that (1) the statute under which the DANCO was issued is unconstitutionally vague; (2) strict construction of the statute mandates reversal of his convictions; (3) the underlying domestic-assault charges violated his constitutional privacy rights; (4) the district court erred by refusing his request to join the domestic-abuse charge and the DANCO-violation charges for trial; (5) the district court erroneously instructed the jury on intent; (6) appellant's constitutional right of self representation was not vindicated; (7) the district court erred by refusing to instruct the jury on its right to nullify a guilty verdict; and (8) the district court erred in sentencing appellant. We affirm on all issues.

FACTS

On November 30, 2009, appellant Steven Samuelson was charged with two counts of felony domestic assault in Itasca County for assaulting his live-in girlfriend, J.L.B. During Samuelson's first court appearance, the district court issued a DANCO that prohibited Samuelson from having any contact with J.L.B. At the hearing, the district court explained to Samuelson: "No contact means no contact in person, in writing, by telephone, through other people, or electronic contact. If she tries to contact you, you do not respond in any way. So, do you understand no contact with that person?" Samuelson responded, "Yes, I do." Samuelson also signed the DANCO, which states that he is "to

have no contact directly, indirectly or through others, in person, by telephone, in writing, electronically or by any other means with" J.L.B., and the order specifies her address.

Approximately a month-and-a-half later, the state charged Samuelson with 33 felony counts—eight attempted and 25 completed violations of the DANCO. The state discovered that J.L.B. posed as Samuelson's daughter and visited him while he was detained in the Itasca County jail, further investigation revealed that Samuelson repeatedly engaged in recorded telephone conversations with J.L.B. from the jail, and phone records showed numerous telephone contacts between Samuelson and J.L.B. during December 2009. J.L.B. conceded that some of the conversations had occurred. A search of Samuelson's jail cell produced thirteen notes written by Samuelson and addressed to J.L.B., reflecting contemporaneous contacts between them.

Following a jury trial, Samuelson was convicted of all counts. The district court imposed and executed the sentence of 60 months and five days, and denied Samuelson's posttrial motions. This appeal followed.

D E C I S I O N

Constitutionality of DANCO Statute

Samuelson argues that because Minn. Stat. § 518B.01, subd. 22 (2008), the statute under which the DANCO was issued, is unconstitutionally vague, his subsequent convictions for violating the DANCO must be reversed. That statute provides:

> (a) A domestic abuse no contact order is an order issued by a court against a defendant in a criminal proceeding for:
>
> (1) domestic abuse;

> (2) harassment or stalking charged under section 609.749 and committed against a family or household member;
>
> (3) violation of an order for protection . . .;
>
> (4) violation of a prior domestic abuse no contact order charged under this subdivision.

"A person who knows of the existence of a [DANCO] issued against the person and violates the order" is guilty of a crime. *Id.* at subd. 22(b).

We decline to address this issue on the merits. This is primarily because Samuelson did not raise it to the district court, which precludes appellate review because a challenge to the constitutionality of a criminal statute may not be raised for the first time on appeal. *State v. Williams*, 794 N.W.2d 867, 874 (Minn. 2011); *State v. Kager*, 357 N.W.2d 369, 370 (Minn. App. 1984) (declining to rule on the constitutionality of a statute when the issue was not raised or ruled upon by the district court).

Strict Construction of the DANCO Statute

Samuelson argues that his convictions must be reversed because the Domestic Abuse Act, as a criminal statute, must be strictly construed in keeping with the common law. We disagree. Generally, under the rule of lenity, criminal statutes are to be "strictly construed in favor of a criminal defendant." *In re Welfare of C.R.M.*, 611 N.W.2d 802, 805 (Minn. 2000); *State v. Williams*, 762 N.W.2d 583, 587 (Minn. App. 2009), *review denied* (Minn. May 27, 2009). But "strict construction does not require that this court assign the narrowest possible interpretation to the statute." *Williams*, 762 N.W.2d at 587.

Samuelson asserts that Minn. Stat. § 518B.01, subd. 22(b) should be construed so that a DANCO is issued only when "there is an actual or claimed victim who complains."

But Samuelson cites no statutory provision or other legal authority to support this bald assertion. The statute pertaining to Samuelson's DANCO violation requires him to know of the existence of the DANCO issued against him and to have violated it. Minn. Stat. § 518B.01, subd. 22(b). Samuelson's argument is not borne out by the statutory language under which he was convicted and therefore lacks merit.

Violation of Constitutional Privacy Rights

Samuelson argues that Minn. Stat. § 518B.01, subd. 22, conflicts with the "constitutional right of privacy between persons in intimate relationships, whether married or unmarried." He allows that the "[s]tate may intrude upon the sacred right of privacy only for serious and pressing reasons," but argues that such reasons were not present here because the victim allegedly did not support the domestic-abuse charge. Samuelson contends that his convictions must be reversed "because the pertinent language in the Domestic Abuse Act must be construed to avoid collision with the constitutional right of privacy between men and women in intimate relationships."

We reject this contention. First, it is another issue that was not raised to or ruled on by the district court. Moreover, even assuming the existence of a privacy right in intimate relationships, Samuelson has offered no authority showing such right to be paramount to the right, indeed duty, of the state to prosecute perpetrators of violent criminal acts that occur in the domestic setting.

Non-Joinder of Charges

Samuelson was charged with two counts of felony domestic assault in November 2009 and violations of the resulting DANCO in January 2010. Neither the state nor

Samuelson moved for joinder of the two complaints until Samuelson, on the first day of trial on the DANCO violation charges, moved to join the underlying domestic assault complaint for a single trial.

Minn. R. Crim. P. 17.03, subd. 4, provides that upon a defendant's motion, a district court "may order two or more . . . complaints . . . to be tried together[.]" Rule 17.03 "neither favors nor disfavors joinder." *State v. Jackson*, 773 N.W.2d 111, 118 (Minn. 2009). In denying Samuelson's motion, the district court stated that the charges "are separate and distinct offenses: [d]ifferent time, different place, different elements."

When a motion is made at commencement of trial without a compelling reason for the delayed request, particularly when granting the motion would delay trial, the district court may deny the motion. *See State v. VanZee*, 547 N.W.2d 387, 391 (Minn. App. 1996) (ruling that the district court properly denied a defendant's motion to proceed pro se when the motion was untimely made on the first day of trial), *review denied* (Minn. July 10, 1996). Moreover, joinder is typically permitted only when the offenses constitute a single behavioral incident, which includes consideration of the time and place of the offenses and whether the offenses were motivated by a single criminal objective. *State v. Profit*, 591 N.W.2d 451, 458 (Minn. 1999). Here, the two complaints did not relate to a single behavioral incident. For these reasons, the district court did not abuse its discretion by denying Samuelson's joinder motion.

Jury Instructions

Samuelson argues that the district court erred by instructing the jury on the criminal intent required to commit a DANCO violation. We disagree. This court

"review[s] a district court's decision to give a requested jury instruction for an abuse of discretion. Jury instructions, reviewed in their entirety, must fairly and adequately explain the law of the case. A jury instruction is erroneous if it materially misstates the applicable law." *State v. Koppi*, 798 N.W.2d 358, 361-62 (Minn. 2011) (citations omitted). A defendant is entitled to a specific instruction if the trial evidence supports the instruction and if the substance of the proposed instruction is not included in instructions chosen by the district court. *State v. Gatson*, 801 N.W.2d 134, 148 (Minn. 2011); *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009).

Samuelson likens his DANCO violations to criminal contempt, and asserts for a crime to have occurred he must have intended to affront the authority of the court by violating the DANCO. Drawn from Minn. Stat. § 518B.01, subd. 22(b), the elements of a DANCO violation are:

> First, there was an existing court domestic abuse no contact order.
>
> Second, the defendant violated a term or condition of the order.
>
> Third, the defendant knew of the existence of the order.
>
> Fourth, the defendant's act took place [enumerate time of offense and county of its occurrence].

10 *Minnesota Practice* CRIMJIG 13.54 (2006).

Under Minnesota law, a "crime is a general-intent crime if the only intent required is to do the act which is prohibited by the statute." *State v. Lindahl*, 309 N.W.2d 763, 766 (Minn. 1981). Samuelson appears to argue that he lacked intent to violate the DANCO because he contacted J.L.B. only to assist her with responsibilities related to living in his house and other similar concerns. But as the evidence shows that Samuelson

knew the contents of the DANCO and violated it, and because the offenses did not require a higher degree of intent, the district court did not err by instructing the jury as it did.[1]

Enhancing Convictions

Samuelson next argues that the district court denied him the constitutional right to defend himself by excluding testimony of his victims to challenge the validity of his prior criminal-sexual-conduct conviction and the pending charges of domestic assault underlying the DANCO. A criminal defendant has the constitutional right to present a complete defense. *State v. Ferguson*, 804 N.W.2d 586, 590-91 (Minn. 2011). This right includes making "all legitimate arguments on the evidence, to explain the evidence, and to present all proper inferences to be drawn therefrom." *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009) (quotation omitted). However, the right to present a defense is limited by the rules of evidence, which permit the district court to exclude evidence that is irrelevant or of marginal evidentiary value. *State v. Quick*, 659 N.W.2d 701, 713 (Minn. 2003); *see Crane v. Kentucky*, 476 U.S. 683, 689-90, 106 S. Ct. 2142, 2146 (1986) (stating reluctance to apply constitutional limitations "on ordinary evidentiary

[1]Samuelson argues that *State v. Gunderson*, 812 N.W.2d 156 (Minn. App. 2012), controls this issue. *Gunderson* held that a specific instruction on intent was required in a case involving violation of a harassment restraining order when the statute defining that offense required the defendant to "knowingly violate[] the order." *Id.* at 164; *see* Minn. Stat. § 609.748, subd. 6 (2010). As the statute at issue here does not require a knowing violation, we decline to follow the reasoning of *Gunderson*. *See State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007) (stating that "[i]f the statutory language is plain and unambiguous, we . . . look to the plain meaning of the statutory language").

rulings"); Minn. R. Evid. 403. A district court's ruling to exclude evidence is subject to review for abuse of discretion. *State v. Pearson*, 775 N.W.2d 155, 160 (Minn. 2009).

Samuelson argues that he could not defend himself against the DANCO violation charge unless he could show through the testimony of his victims "that he was guilty of no enhancing felony within ten years, that he was guilty of no domestic assault, and that he had been kind to the women in his life." The district court did not abuse its discretion by ruling this evidence inadmissible to defend against the DANCO violation charges. At issue in the DANCO violation proceedings was whether Samuelson violated the DANCO, not whether prior domestic assault convictions or the underlying DANCO were invalid.

Jury Nullification Instruction

Samuelson contends that he should have been permitted by the district court to inform the jury that it could find him not guilty in a criminal case, regardless of the application of law to the facts. Because such argument would conflict with the law of the case embodied in the district court's proper instructions to the jury, we disagree. "District courts have considerable latitude when choosing jury instructions, but the instructions, viewed as a whole, must accurately state the law." *State v. Hooks*, 752 N.W.2d 79, 86 (Minn. App. 2008). While Minnesota law recognizes the power of a jury to acquit a defendant "despite the law and the facts," that power "is not a right of juries but something which results from a number of things including the right of a criminal defendant to have a jury trial, the rule prohibiting postverdict inquiry into the thought processes of jurors, and the rules against appellate review of verdicts of acquittal." *State*

v. Perkins, 353 N.W.2d 557, 561 (Minn. 1984); *see McKenzie v. State*, 754 N.W.2d 366, 370 (Minn. 2008) (quoting *Perkins* to conclude that there is no requirement to instruct a jury on its right of nullification). However, there is no constitutional mandate that a jury be instructed "to acquit for impermissible reasons—that is, an instruction which informed the jury of its raw power of lenity." *Perkins*, 353 N.W.2d at 562.

Sentencing

Finally, Samuelson argues that his sentence was "excessive and unreasonable" even though he alludes to there being "no 'technical' error in this case." In *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006), the court noted that appellate courts have the authority to alter a criminal sentence if it is "unreasonable or inappropriate," or if it violates the judiciary's interest in "fairness and uniformity." *Id*. (quotation omitted). But there, the defendant requested a mitigated dispositional departure from the sentencing guidelines, and the supreme court affirmed the district court's denial of that motion as a proper exercise of discretion. *Id*. Samuelson offers nothing that would support a mitigated departure from the sentencing guidelines, and his reasons, which include collateral attacks on prior orders or judgments, are impermissible. We see no reason to disturb the district court's sentencing decision in this case. *See State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981) (noting that an appellate court will alter a district court's decision to impose a presumptive sentence only rarely).

Affirmed.