STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1834

State of Minnesota,
Respondent,

vs.

Bruce Edward Patterson,
Appellant.

Filed November 12, 2013
Affirmed
Kirk, Judge

Ramsey County District Court
File No. 62-CR-12-133

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Interim Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Kirk, Judge; and Smith, Judge.

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

KIRK, Judge

On appeal from his kidnapping conviction, appellant argues that (1) the evidence is insufficient to sustain his conviction; (2) the district court abused its discretion by allowing an unredacted squad car video of appellant into evidence; (3) the district court abused its discretion by not further redacting appellant's statement to police; (4) appellant is entitled to a new trial due to the cumulative effect of errors at trial; (5) the district court abused its discretion by imposing an upward durational sentencing departure; and (6) the district court abused its discretion by imposing a $1,500 fine. We affirm.

D E C I S I O N

I. The evidence is sufficient to sustain appellant's kidnapping conviction.

In reviewing a claim of insufficient evidence, this court considers the record "in a light most favorable to the verdict to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt." *State v. Hanson*, 800 N.W.2d 618, 621 (Minn. 2011) (quotation omitted). We assume that the "jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

On January 5, 2012, respondent State of Minnesota charged appellant Bruce Edward Patterson with one count of first-degree criminal sexual conduct, alleging that he sexually assaulted C.A.P., a woman he had recently met at his apartment, on the night of January 3 and the early morning of January 4. The state later amended the complaint and

added a count of kidnapping. A jury found appellant guilty of kidnapping, but acquitted him of first-degree criminal sexual conduct. Under the kidnapping statute, an individual is guilty if he or she "confines or removes from one place to another, any person without the person's consent . . . to facilitate commission of any felony or flight thereafter." Minn. Stat. § 609.25, subd. 1(2) (2010).

Appellant contends that the state's evidence was insufficient to support his kidnapping conviction because the state failed to prove that his confinement of C.A.P. was more than incidental to the criminal-sexual-conduct offense. In support of his argument, appellant relies on two Minnesota Supreme Court cases. *See State v. Welch*, 675 N.W.2d 615, 620 (Minn. 2004) (reversing the defendant's conviction for kidnapping and determining that the defendant's conduct was incidental because "the confinement that forms the basis of the kidnapping is the very force and coercion that supports the attempted second-degree criminal sexual conduct conviction"); *State v. Smith*, 669 N.W.2d 19, 32 (Minn. 2003) (holding "that where the confinement or removal of the victim is completely incidental to the perpetration of a separate felony, it does not constitute kidnapping"), *overruled on other grounds by State v. Leake*, 699 N.W.2d 312 (Minn. 2005).

This case is distinguishable from *Smith* and *Welch*. Unlike the victim in *Smith* who "was confined only momentarily" and the victim in *Welch* who was confined for an even shorter period of time, C.A.P. struggled with appellant for a prolonged period and appellant prevented her multiple times from leaving his apartment. *See Welch*, 675 N.W.2d at 621; *Smith*, 669 N.W.2d at 32. Appellant's conduct was not merely incidental

to the sexual assault; instead, it constituted "purposeful behavior in its own right." *See State v. Earl*, 702 N.W.2d 711, 723 (Minn. 2005).

Further, the supreme court's concern in *Welch* and *Smith*—that the defendant not receive a separate criminal sentence for a crime that was incidental to the underlying crime—is not present in this case. In *Smith*, the defendant was convicted of premeditated first-degree murder and first-degree murder while committing a kidnapping. 669 N.W.2d at 25. Similarly, the defendant in *Welch* was convicted of kidnapping and attempted second-degree criminal sexual conduct. 675 N.W.2d at 618. The supreme court specifically stated in *Smith* that the defendant's "confinement or removal" of the victim must be more than incidental to the commission of another crime "in order to justify a separate criminal sentence." 669 N.W.2d at 32. Here, appellant was charged with kidnapping and first-degree criminal sexual conduct but was only convicted of kidnapping. Thus, the supreme court's concern in *Welch* and *Smith* is not present in this case because appellant was only sentenced for one crime. Therefore, we conclude that the evidence is sufficient to sustain appellant's conviction of kidnapping.

II. The district court's admission of the unredacted squad car video into evidence was harmless error.

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

Upon appellant's arrest, he was placed in a squad car for approximately 50 to 60 minutes. During that time, appellant made numerous statements which were audio and video recorded. Appellant first stated, "Do a sex test on her. It ain't no sex or nothing man. I just told her to leave man. It ain't no sex or nothing." Appellant proceeded to make several additional statements about C.A.P., stating that he "tried to rescue her" from the Minneapolis Police and that he brought her to his apartment because she asked for help. During a lengthy statement, appellant used the word "n-gger" several times, accused the police officer of belonging to the Ku Klux Klan, and used several other swear words. Appellant also stated, "you know got'damn well that dirty b-tch is wrong too. That dirty b-tch just got out of the police car in Minneapolis, and came to my house and then put the police on me." The police officer who was present in the car with appellant did not respond to most of appellant's statements and did not ask appellant any questions.

As an initial matter, the state argues that appellant waived his objection to the district court's admission of the entire squad car video because it was the defense strategy to ask that either the entire video be suppressed or the entire video be played. However, the record establishes that appellant's counsel objected to the admission of the video of appellant in the squad car on the night of his arrest but, after the district court determined that appellant's statements in the video were relevant and admissible, appellant's counsel requested that the district court admit the entire video rather than omitting portions of the video. The record shows that appellant did not waive his objection to the admission of the squad car video.

Appellant contends that the prejudicial statements he made regarding the Ku Klux Klan, his use of the word "n-gger," and his implicit threats to the police officer were not relevant. "The relevant statements made during a police interview may be admissible, unless precluded by the constitution, statute or the rules of evidence." *State v. Tovar*, 605 N.W.2d 717, 725 (Minn. 2000); *see also* Minn. R. Evid. 402 (stating that all relevant evidence is generally admissible). Evidence is relevant if it has any tendency to make the existence of any material fact more or less probable than it would be without the evidence. Minn. R. Evid. 401. Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice. Minn. R. Evid. 403.

Appellant concedes that the statements appellant made in the squad car video about the incident involving C.A.P. were relevant. We agree with appellant that the rest of the statements in the squad car video were not relevant. The statements were not necessary to show appellant's angry and intoxicated state of mind at the time of the offense because several police officers testified about appellant's demeanor in his apartment before he was arrested. The statements were also more prejudicial than probative. However, we conclude that the admission of the video with the unredacted statements was harmless error because there was strong evidence supporting appellant's conviction, including corroboration of C.A.P.'s testimony by two of appellant's neighbors. *See State v. Shoen*, 598 N.W.2d 370, 377 (Minn. 1999) ("For an error to be harmless beyond a reasonable doubt, the guilty verdict actually rendered must be surely unattributable to the error." (quotations and alterations omitted)).

III. The district court did not abuse its discretion by not further redacting portions of appellant's statement to police.

Appellant contends that the district court abused its discretion by not redacting police statements that alluded to appellant being a monster and to his prior criminal history. This court reviews a district court's evidentiary rulings for an abuse of discretion. *Amos*, 658 N.W.2d at 203.

In motions filed prior to the jury trial, appellant requested that the district court suppress or redact his post-arrest, custodial statements to St. Paul police. The parties agreed to redact certain portions of appellant's statement to police. However, appellant's counsel objected to other statements that remained in the transcript of the interview. Appellant's counsel specifically objected to police references to appellant as a "monster" and to his prior criminal behavior. Following the hearing, the district court denied appellant's motion to further redact the statements.

During the jury trial, the district court admitted the redacted video and transcript of appellant's interview with the police into evidence. At one point in the interview, one of the police officers asked appellant, "Now, we have to go to the prosecutor and we're either going to tell the prosecutor that hey, [appellant] is a monster and you need to lock him up for as long as you can. Or we need to go to the prosecutor and say . . . [appellant] made a mistake." The officer later stated, "So what we're going to go to the prosecutor and say either [appellant's] a monster. [Appellant] made a mistake and could use some treatment. . . . Are you the monster that we need to lock up?" The officer used the word "monster" in a similar manner three more times in the interview.

Appellant also objects to several statements he made throughout the interview that he claims refer to his criminal record. On one occasion, in response to an officer's question about whether he assaulted C.A.P., appellant stated, "Absolutely not, sir. Um I have . . . to uh constantly be on my P's and Q's especially with women." On another occasion, appellant stated, "I . . . want you to know that I am very conscious I am very careful around women and I wouldn't do any harm to any woman." Later on in the interview, one officer asked appellant whether he thought it was odd that he did not call the police to report that C.A.P. had attacked him. Appellant replied that he did not think her actions warranted police intervention. In response, the officer asked, "Well considering your past? Wouldn't you want the police on your side?" And another officer stated, "You're the one who said that you have to be very careful around women."

Relevant statements that occur during a police interview may be admissible. *Tovar*, 605 N.W.2d at 725. Evidence of a defendant's prior bad acts "is not admissible to prove the character of a person in order to show that the person acted in conformity therewith." Minn. R. Evid. 404(b); *see State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). In addition, the state may not "deprive a defendant of a fair trial by means of insinuations and innuendoes which plant in the minds of the jury a prejudicial belief in the existence of evidence which is otherwise inadmissible." *State v. Currie*, 267 Minn. 294, 301, 126 N.W.2d 389, 395 (1964).

Here, the police officers' use of the word "monster" in the interview was not improper. In context, the word was used as an interview tactic to ask appellant whether or not he committed an assault against C.A.P. The officer never said that he thought

appellant is a monster. The other statements that appellant objects to were also not improper. All of the statements were very unspecific and generally alluded to being careful around women. Further, two of the statements were made by appellant himself. The statements did not necessarily refer to appellant's prior criminal history, but instead could have been referring to many different things, such as his relationship or marital history. The district court did not abuse its discretion by declining to make additional redactions to appellant's interview with police.

IV. Appellant is not entitled to a new trial due to the cumulative effect of errors at trial.

In rare cases, "the cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial when the 'errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant's prejudice by producing a biased jury.'" *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012) (citation omitted).

As previously discussed, the district court's admission of the unredacted squad car video into evidence was harmless error and the district court did not abuse its discretion by not further redacting appellant's statement to police before receiving it into evidence. In addition, the evidence was sufficient to sustain appellant's conviction of kidnapping. Further, the state presented substantial evidence of appellant's guilt. C.A.P. testified extensively about the incident and her testimony was corroborated by the statements she made to police and a nurse, as well as by the testimony of two of appellant's neighbors who heard and saw part of the incident. Appellant is not entitled to a new trial.

V. The district court did not abuse its discretion by imposing an upward durational sentencing departure.

Appellant concedes that the district court was permitted by statute to impose an upward durational sentencing departure. *See* Minn. Stat. § 609.1095, subd. 2 (2010) (providing that when an individual is convicted of a violent felony crime, the judge may impose an aggravated durational departure from the presumptive imprisonment sentence up to the statutory maximum sentence provided that certain requirements are met). But appellant argues that the "quadruple departure" the district court imposed resulted in a disproportionate, unreasonable, and unjustified sentence. This court reviews a district court's sentencing decision for an abuse of discretion. *State v. Franklin*, 604 N.W.2d 79, 82 (Minn. 2000).

Appellant's argument is not persuasive. Appellant does not explain why the sentence was unreasonable, and the sentence the district court imposed was authorized by Minn. Stat. § 609.1095, subd. 2. Under that statute, the district court was authorized to impose an aggravated durational departure from the presumptive sentence, and the district court carefully considered the statutory requirements before making that determination. The district court found that appellant had four convictions in less than ten years for sexually related crimes and he is a danger to public safety based on his prior criminal history and the current offense. *See* Minn. Stat. § 609.1095, subd. 2. As a result, the district court sentenced appellant to 180 months in prison, which the district court stated is approximately three times the upper end of the box.

Appellant also contends that his sentence is excessive because "his conduct barely constituted a kidnapping." But, as previously discussed, the evidence is sufficient to sustain appellant's kidnapping conviction. And the district court imposed the aggravated durational departure after finding that appellant is a dangerous offender primarily based on his prior convictions.

VI. The district court did not abuse its discretion by imposing a $1,500 fine.

Appellant argues that the district court abused its discretion in imposing a $1,500 fine because it creates an undue hardship. If a defendant qualifies for a public defender, the district court may reduce the amount of the minimum fine required by statute to not less than $50. Minn. Stat. § 609.101, subd. 5(b) (2010). A district court has broad discretion in imposing a fine. *State v. Rewitzer*, 617 N.W.2d 407, 412 (Minn. 2000).

The statute gives the district court great latitude in reducing a defendant's fine. Appellant does not argue that the fine violates the United States and Minnesota Constitutions because it is excessive. *See* U.S. Const. amend VIII; Minn. Const. art. I, § 5. As the state argues, the fine does not appear to impose an undue hardship on appellant because the district court authorized its deduction from his prison earnings and appellant was sentenced to a lengthy prison sentence, giving him several years to pay the fine. Therefore, the district court did not abuse its discretion by imposing a $1,500 fine.

Affirmed.