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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0187
A17-0191

State of Minnesota,
Respondent,

vs.

Anthony Paul Hernandez,
Appellant.

Filed September 24, 2018
Affirmed
Jesson, Judge

Hennepin County District Court
File Nos. 27-CR-14-15983, 27-CR-14-16668

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Kirk, Judge; and Smith, John, Judge.*

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

JESSON, Judge

Appellant Anthony Paul Hernandez challenges his convictions of criminal-sexual conduct committed against two sisters, arguing that the district court improperly joined the victims' cases. He also argues that the district court abused its discretion when it prevented him from introducing evidence suggesting that the victims may have experienced past sexual abuse and denied a full *Schwartz* hearing to investigate potential juror misconduct. We affirm.

FACTS

In 2013, appellant Anthony Paul Hernandez reconnected with a woman he had briefly dated earlier. The woman decided to move back to Minnesota from Tennessee with two of her daughters, I.A. and K.Z. After returning, she and Hernandez moved into a duplex together where the girls shared a basement bedroom while Hernandez and the woman slept in the living room on a pull-out sofa.

The girls' mother worked full-time and often started her shifts early in the morning. At the time, I.A. and K.Z. were 9 and 11 years old, respectively, and given their mother's irregular work schedule, they needed someone to get them ready for school and generally care for their wellbeing when their mother was away at work. Because he worked only part time, Hernandez often filled this role. For instance, if the girls overslept, he would walk downstairs into their room to wake them. He also helped the girls get ready in the mornings and sent them off on their walk to school.

In June 2014, a school social worker received reports that Hernandez was touching I.A. inappropriately. The social worker pulled I.A. out of class to talk, and I.A. revealed that Hernandez would go into her room at night, have K.Z. leave and go upstairs, close the bedroom door, and then unbutton her top and touch I.A.'s breasts and chest. I.A. also said that Hernandez touched her "private parts" under her clothes and her buttocks over her clothes. And she said that Hernandez sometimes made I.A. sit on his lap while he touched her. The social worker called child protective services.

I.A. sat down for a forensic interview to investigate the allegations. During the interview, I.A. stated that Hernandez would sometimes touch her "boobs" and "butt" and "put his private on [her] boob." She also described that when this happened, her "boob" would get "wet" and then Hernandez would wipe it off with a blanket from her bed. I.A. told the interviewer that Hernandez kissed her like "a grown up."

After hearing this information, the state arrested Hernandez and charged him with first- and second-degree criminal sexual conduct. As part of the investigation, I.A.'s sister, K.Z., was also interviewed. During K.Z.'s interview, she also described being sexually abused by Hernandez, recalling three times when Hernandez pulled her on top of him in the living room and touched her "private parts." After these revelations, the state filed a separate complaint against Hernandez for first-degree criminal sexual conduct against K.Z.

Before the cases went to trial, the state requested that the two cases be joined. The district court granted the request over a defense objection, finding that the offenses against both I.A. and K.Z. arose from a single behavioral incident. Before the trial began, Hernandez filed a motion to admit evidence suggesting the victims had previously alleged they were sexually abused before moving to Minnesota. Hernandez argued that without admitting this information, the jury would likely think that the girls' knowledge about sexual matters came from him, when in fact, it could have originated elsewhere. The district court denied Hernandez's motion under Minnesota's rape-shield law, which generally prohibits introducing evidence of a victim's sexual history. *See* Minn. Stat. § 609.347, subd. 3 (2016); Minn. R. Evid. 412.

The cases proceeded to a two-week jury trial. On the second day of jury deliberations, the district court received a note stating that the jurors had "a significant majority vote but are unable to reach a unanimous opinion." The note asked if the jury could return a majority vote, but after discussion with the parties, the court responded that the jury's verdict needed to be unanimous. At noon that day another jury note emerged stating that the vote was 11-1 with "no reasonable possibility of resolution on a decision."

As the court discussed this second note with the parties, a third note appeared, stating that the jury had reached a verdict. The jury found Hernandez guilty of first-and second-degree criminal sexual conduct against I.A. and second-degree criminal sexual conduct against K.Z. After the verdict was read, each juror was asked if this was his or her verdict. Each juror responded, "Yes."

About a month later, one of the jurors, D.G., met with the district court judge about the case. D.G. said that at one point during deliberations, another juror told him, "I'm not coming back tomorrow, even if I have to go to jail." D.G. felt threatened by the comment, although he admitted he did not ask what the comment meant and there was no physical violence or an overt physical threat directed towards him. The district court informed the parties of its meeting and D.G.'s comments.

Hernandez appealed both of his convictions, and the appeals were consolidated and stayed pending a *Schwartz* hearing[1] to investigate D.G.'s comments. The district court granted what it described as a "limited" *Schwartz* hearing at which only D.G. would be questioned. At the hearing, D.G. reiterated what the other juror said to him but stated that he was not directly threatened. The court determined there had not been a prima facie showing of misconduct and no other jurors would be called for questioning.

The stay was dissolved, but the appeal was stayed again for post-conviction proceedings after D.G. contacted the Innocence Project of Minnesota. D.G. told the Innocence Project that a female juror on the panel "took over deliberations" and that he felt threatened by comments made by another juror "who wanted the process to be over." The Innocence Project compiled these comments into an affidavit and submitted it to the district court. After the affidavit was submitted, Hernandez filed a post-conviction motion to reopen the *Schwartz* hearing. The district court denied the motion, and the appeal was reinstated.

D E C I S I O N

Hernandez raises three issues on appeal: (I) the district court improperly joined the victims' offenses for trial; (II) the district court abused its discretion when it prevented him from introducing evidence suggesting that the victims were sexually abused before moving to Minnesota; and (III) the district court abused its discretion by denying a full *Schwartz* hearing to investigate potential juror misconduct. We address each issue in turn.

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[1] The purpose of a *Schwartz* hearing is to investigate allegations of juror misconduct. *State v. Martin*, 614 N.W.2d 214, 226 (Minn. 2000).

I. The district court did not err by joining Hernandez's cases.

Before we reach the main issue concerning the joinder of Hernandez's offenses, we must address the threshold issue of what standard appellate courts apply when reviewing a district court's decision to join cases. Hernandez argues that an abuse-of-discretion standard applies, whereas the state argues for de novo review.

In *State v. Jackson*, the supreme court reviewed a motion to sever offenses using the abuse-of-discretion standard. 770 N.W.2d 470, 485 (Minn. 2009). But three years prior, in *State v. Kendell*, the supreme court held that "de novo review is the appropriate standard for reviewing a district court's denial of a motion for severance of offenses." 723 N.W.2d 597, 607 (Minn. 2006). We discern that *Kendell*'s application of the de novo standard was not overruled by *Jackson.* The supreme court in *Kendell* noted that until that time, it had "not squarely addressed" what the appropriate standard of review should be for a motion to sever offenses. *Id.* The supreme court examined and traced caselaw involving same or similar inquiries and then, synthesizing this history and analysis, it explicitly held that de novo is the appropriate standard of review. By contrast, the supreme court in *Jackson*, when the standard of review was not at issue, did not engage in such a detailed examination and instead employed an abuse-of-discretion standard by relying on a case predating *Kendell*, but without acknowledging *Kendell*'s analysis expressly adopting the de novo standard. Given the supreme court's detailed inquiry and its clear adoption of the de novo standard, we defer to the opinion and reasoning in *Kendell*.

We now turn to Hernandez's first issue: whether the district court properly joined the two offenses. If a defendant's behavior constitutes more than one criminal offense, each offense may be joined into one overall criminal case. Minn. R. Crim. P. 17.03, subd. 1. To determine if offenses are related, we ask whether the offenses are connected as a "single behavioral incident." *State v. Ross*, 732 N.W.2d 274, 278 (Minn. 2007) (quoting *State v. Profit*, 591 N.W.2d 451, 458 (Minn. 1999)). For purposes of joinder, the phrase "single behavioral incident" is a term of art that precedent distills down to three factors:

- how close in time the offenses took place;
- how close in place and proximity the offenses took place; and
- whether the conduct involved in each offense was motivated by an effort to obtain a single criminal objective.

Profit, 591 N.W.2d at 458. Determining whether separate offenses may be considered a single behavioral incident depends on the unique facts of each offense. *State v. Hawkins*, 511 N.W.2d 9, 13 (Minn. 1994). We analyze below each of the above factors to determine whether Hernandez's two cases relating to I.A. and K.Z. are part of a single behavioral incident. After weighing the factors we further examine whether, if the district court erred in joinder, Hernandez suffers prejudice.

Time factor

The first factor looks at how much time passed between offenses. Here, Hernandez moved in with the girls in March 2014. He began sexually abusing them that same month until June 2014, approximately three months later. This fact falls somewhere in the middle of the time-factor spectrum. On one end of the spectrum are cases where offenses are linked by only a few hours or overnight, which supports a determination that they were the same behavioral incident. *See, e.g.*, *State v. Spears*, 560 N.W.2d 723, 727 (Minn. App.

1997), *review denied* (Minn. May 28, 1997) (stating that, for sentencing purposes, multiple counts of criminal sexual conduct committed over 45 minutes were connected in time and amounted to a single behavioral incident). On the other end are cases where offenses occur over a period of months, or even years—leading courts to conclude that the time factor cautions against joinder. For example, in *State v. Suhon*, the defendant sexually abused his adopted daughter for ten years—a time period we determined was too protracted to amount to a single behavioral incident. 742 N.W.2d 16, 24 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

As noted, the single-behavioral-incident analysis depends on the unique facts of each offense. The facts in this case demonstrate that after Hernandez moved in with the girls and their mother in March 2014, he engaged in a consistent pattern of sexual abuse over a three-month period. This is far removed from both the ten years of abuse in *Suhon* which we determined was too long and cases where the offenses are linked by mere hours. Based on the record and the particularized facts of Hernandez's case, we conclude the time factor is neutral as we weigh whether the offenses are part of a single behavioral incident.

Place and proximity factor

The next factor in the single-behavioral-incident analysis examines where, and how close to each other, the offenses occurred. Hernandez abused both I.A. and K.Z. in the part of a duplex he shared with their mother. I.A. stated that Hernandez abused her in the basement bedroom she shared with K.Z. The abuse often occurred in the mornings when her mother was at work and after K.Z. had gone upstairs. K.Z. revealed that Hernandez abused her on multiple occasions when she was alone with him on the pullout couch in the living room.

While a generalized location, such as a house, is not always enough to weigh in favor of this factor, s*ee Suhon*, 742 N.W.2d at 24,[2] given the close nature of the duplex, we agree with the district court that I.A.'s and K.Z.'s abuse occurred within the same geographic location. As a result, we conclude that the place-and-proximity factor weighs in favor of a determination that the offenses were part of a single behavioral incident.

Single-criminal-objective factor

The last consideration is whether Hernandez's conduct was motivated by an effort to obtain a single criminal objective. *Profit*, 591 N.W.2d at 458. In nearly every case applying sexual-abuse offenses to the single-behavioral-incident analysis, courts describe the underlying motivation as satisfying the defendant's perverse sexual desires. *See, e.g.*, *Spears*, 560 N.W.2d at 727 (noting that defendant's abduction and sexual assault of victim was motivated by his "perverse sexual needs"); *State v. Herberg*, 324 N.W.2d 346, 349 (Minn. 1982) (determining that criminal sexual conduct and kidnapping offenses were motivated by defendant's desire to "satisfy his perverse sexual needs"); *Suhon*, 742 N.W.2d at 24 (stating that defendant's motivation in sexually abusing his adopted daughter was based on his "perverse sexual desires").

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[2] In *Suhon*, the separate offenses occurred within the same home but they "happened in many different rooms and at different times," and we concluded this weighed against determining that the offenses were linked in place and proximity. *Suhon*, 742 N.W.2d at 24.

Hernandez argues that satisfying one's perverse desires is too broad a motivation to weigh in favor of a single criminal objective.[3] We decline to address whether this motivation is adequate for a joinder analysis in this case because a narrower criminal objective is present. While Hernandez was arguably motivated to satisfy his perverse desires, he did so by leveraging his position as a caretaker for these two specific victims. Only by exploiting this position was Hernandez able to achieve his single criminal objective of abusing I.A. and K.Z.

The record reflects that Hernandez frequently took care of the girls. This included waking the girls up, getting them out of bed, and making sure they were ready for school. The record further demonstrates that Hernandez took advantage of these moments to abuse the girls when he was most entrusted with caring for them. I.A. testified that sometimes, when Hernandez would come down to wake the victims up in the mornings, he would seize the opportunity to abuse her. In her forensic interview, I.A. was asked where her mother was when Hernandez abused her. I.A. responded, "[S]he's usually at work." When asked what time of day the abuse usually occurred, I.A. answered that it usually occurred when

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[3] Previous cases with similar motivations at issue undertake a highly fact-sensitive analysis in deciding if such motivation is adequate for a single criminal objective. *See, e.g.*, *Spears*, 560 N.W.2d at 727 (stating that motivation underlying multiple criminal-sexual-conduct offenses was to satisfy defendant's perverse sexual desires, which was adequate to weigh in favor of a single criminal objective); *Herberg*, 324 N.W.2d at 349 (determining multiple sexual-assault offenses were motivated by a single criminal objective where the defendant kidnapped and sexually tortured the victim); *but see Suhon*, 742 N.W.2d at 24 (concluding defendant's "motivation by perverse sexual desires" was too broad to qualify as a single criminal objective (quotation omitted)); *State v. Butterfield*, 555 N.W.2d 526, 531 (Minn. App. 1996) (stating that "a defendant's desire to satisfy his perverse sexual desires is too broad a motivations [sic] to justify application of the single behavioral incident rule"), *review denied* (Minn. Dec. 17, 1996).

her mother was away during "school time," and the last time she remembered Hernandez abusing her was when her mother was at work. K.Z. gave similar testimony at trial when describing the abuse by Hernandez, testifying she believed her mother was at work when Hernandez abused her in the living room. And when asked who took care of both victims when their mother was at work, K.Z. said Hernandez was the person who looked after them.

In sum, while their mother was away, Hernandez was trusted to take care of I.A. and K.Z. But instead of caring for the girls, he used his trust, position, and power to prey on them. He exploited his caretaker role, satisfying his perverse needs, which supports our conclusion that the single-criminal-objective factor is met.[4]

Weighing all three factors, we first observe that Hernandez abused the girls within a three-month period. Next, we observe that Hernandez abused I.A. multiple times when she was alone in her bedroom, and he abused K.Z. multiple times in the nearby family room on the pullout couch. This leads us to conclude the offenses were linked in place and proximity. Finally, we note that Hernandez was able to abuse the girls by exploiting his role as a caretaker, primarily by abusing the victims while their mother was at work, which weighs in favor of the offenses being linked by a single criminal objective. Based on the

[4] We note our analysis on this point is similar to *State v. Galloway*, No. A13-1449, 2014 WL 3891812 (Minn. App. Aug. 11, 2014), *review denied* (Minn. Nov. 18, 2014). In *Galloway* we acknowledged that "motivation by perverse sexual desires is too broad to constitute a single criminal objective." *Id.* at *2 (quoting *Suhon*, 742 N.W.2d at 24). But we explained that the *Galloway* defendant used his authoritative role as the victims' caretaker to take sexual advantage of the victims. *Id.* This caretaker role—entwined with the unity of time and place factors and a similarity of offenses—lead us to conclude here that the offenses arose from a single course of conduct. *See id.*

record and viewed through the prism of de novo review, we conclude that Hernandez abused the girls as part of a single behavioral incident. For this reason, we determine that the district court correctly joined I.A. and K.Z.'s offenses.

Prejudice

Nonetheless, we further conclude that, even if the district court had improperly joined the cases, Hernandez suffered no prejudice as a result of the joinder. If a district court joins cases in error, we must determine whether the error was prejudicial. *Ross*, 732 N.W.2d at 280. The supreme court has held that the improper joinder of two offenses was not prejudicial when evidence of either of the offenses could have been admitted as *Spreigl* evidence at the trial of the other offense. *State v. Conaway*, 319 N.W.2d 35, 42 (Minn. 1982).

Here, evidence of Hernandez's conduct committed against one sister would have been admissible as *Spreigl* evidence in the trial of his offense committed against the other sister. Generally, evidence of a defendant's other crimes, wrongs, or bad acts are not admissible to show bad character. *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965). But such evidence may be admitted to show opportunity, motive, intent, preparation, plan, identity, knowledge, or absence of mistake or accident. Minn. R. Evid. 404(b); *Profit*, 591 N.W.2d at 461. The admission of *Spreigl* evidence requires, among other conditions, clear and convincing evidence of the defendant's participation in the prior act; that the evidence is material and relevant to the state's case, and that its probative value is not outweighed by its prejudicial effect to the defense. *State v. Ness*, 707 N.W.2d 676, 685-86 (Minn.

2006). To analyze whether prejudice resulted from improper joinder we examine these conditions. *Profit*, 591 N.W.2d at 460-61.

These conditions were met with respect to Hernandez's conduct committed against I.A. and K.Z. Both victims' allegations of sexual abuse were supported by the police investigation and CornerHouse interviews, meeting the clear-and-convincing standard. *See Ness*, 707 N.W.2d at 686. The evidence is relevant and material to the state's case because it tends to show a common scheme or plan of abuse in the victims' home and a single criminal objective of exploiting Hernandez's role as caretaker to both children. And evidence is only unfairly prejudicial if it is used "to persuade by illegitimate means." *Profit*, 591 N.W.2d at 461 (quotation omitted). Here, the evidence of Hernandez's conduct with each victim was not offered to persuade the jury by improper means. Therefore, we conclude that, even if the district court erred by joining the offenses committed against each victim for trial, that error was not prejudicial because evidence of each offense would have been admissible at the trial relating to Hernandez's conduct against the other victim.

II. Excluding evidence of the victims' alleged previous sexual abuse did not violate Hernandez's right to present a defense.

Hernandez next challenges the district court's exclusion of evidence that the victims were sexually abused before moving to Minnesota. Hernandez argues this evidence would suggest an alternative source for the victims' knowledge about sexual matters that the jury would otherwise assume originated from him. His inability to present this evidence at trial, Hernandez asserts, violated his right to present a complete defense.

Like all criminal defendants, Hernandez had the right to present a complete defense. *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). But Hernandez's interest in presenting the victims' alleged previous sexual abuse in pursuit of that defense falls squarely within the confines of Minnesota's rape-shield law, which generally prevents introducing evidence at trial concerning a victim's sexual history. Minn. Stat. § 609.347, subd. 3; s*ee* Minn. R. Evid. 412. In some circumstances the rape-shield rule contemplates an exception for a criminal defendant's constitutional right to present a defense; this includes presenting evidence that may establish an alternative source for a victim's knowledge of sex in cases where a jury is likely to assume that knowledge came from the defendant's alleged sexual abuse. *State v. Benedict*, 397 N.W.2d 337, 341 (Minn. 1986). The test for deciding if this evidence is admissible is to balance its probative value against the potential for causing the victim unfair prejudice. *Id.* And this court has noted that except in special circumstances, evidence of a victim's prior sexual history will not demonstrate relevance under this test. *State v. Crims*, 540 N.W.2d 860, 868 (Minn. App. 1995), *review denied* (Minn. Jan. 23, 1996).

Hernandez's argument concerns an evidentiary ruling and application of the rape-shield law, and we review the district court's denial of his request to introduce this evidence for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). An abuse of discretion occurs when a court's decision is based on an incorrect view of the law or is against logic and the facts in the record. *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011).

Hernandez sought to introduce child-protection documents from Tennessee, which alleged that one of the girls' uncles physically and sexually abused them before they moved back to Minnesota. These records state that the girls were "inappropriately touched," with the only specific allegation being that their uncle "put his feet on [K.Z.'s] legs and started to move them up and down and told her that he wanted her to know what it would feel like when a guy messes with her." The records also suggest that the girls could have been abused by another uncle in Arkansas. And finally, Hernandez wanted to introduce evidence that their step-cousin forced K.Z. to perform oral sex on him when she was seven years old.

But the district court found this evidence about past abuse too speculative. The court also believed the victims were old enough for the jury to assume that their sexual knowledge could have come from other sources besides Hernandez. It observed that the victims were 9 and 11 years old when Hernandez's abuse occurred and that they would be 11 and 13 years old by the time of trial. This was "old enough to likely be familiar with the correct terminology for genitalia," the court reasoned, and concluded that "a jury will likely not infer the only source of the alleged victims' knowledge was the alleged contact between them and Mr. Hernandez."

We note a similar issue occurred in *Benedict*, where the defendant sexually abused his five-year-old neighbor. 397 N.W.2d at 338. There, the state called an expert witness, who testified that the victim had an unusual amount of sexual knowledge for someone his age, and the expert concluded it "was the result of the boy having been given an education by somebody." *Id.* at 340. The defendant attempted to introduce evidence that this knowledge came from the victim's family; the district court barred that use but gave the defense some "leeway" in its questioning to show that the knowledge came from another source. *Id.* at 341. The supreme court affirmed, writing that the district court did not abuse its discretion because the evidence had "weak probative value" compared with its potential "for causing unfair prejudice" to the victim. *Id.*

Hernandez argues that our previous decision in *State v. Goldenstein*, 505 N.W.2d 332 (Minn. App. 1993), *review denied* (Minn. Oct. 19, 1993), supports his contention that the district court abused its discretion. In *Goldenstein*, we reversed multiple criminal-sexual-conduct convictions because the district court improperly excluded evidence that the victims made prior, unsubstantiated accusations of abuse against a social worker. 505 N.W.2d at 340. Importantly, we noted there was no physical evidence of abuse, so the credibility of the victims' statements was a critical linchpin in the defense's case. This was not true in Hernandez's case where DNA in Hernandez's underwear was linked to one of the victims. In this respect, Hernandez's case does not hinge solely on the credibility of the victims.

Given the analysis in *Benedict*, and the girls' ages in this case, the district court did not abuse its discretion by excluding this evidence. The district court reasonably concluded that the victims were old enough to have more sexual knowledge than Hernandez argues, and that the evidence was speculative and lacked sufficient value relative to its invasion into the victims' privacy. And like in *Benedict*, the district court gave Hernandez some leeway to explore this topic if the state opened the door during direct examination.

Because the jury was unlikely to assume that Hernandez was the only source of the girls' sexual knowledge, and because the evidence had low probative value, we conclude that the district court did not abuse its discretion by preventing Hernandez from introducing this information at trial.

III. The district court did not abuse its discretion in its investigation of possible juror misconduct.

The final issue concerns the district court's limited *Schwartz* hearing. Hernandez argues the hearing was improper because the district court did not question the one juror who allegedly threatened another juror during deliberations. District courts have discretion to conduct a *Schwartz* hearing in whatever manner they see fit. *State v. Greer*, 662 N.W.2d 121, 124 (Minn. 2003). This discretion includes determining how many jurors to call to testify. *See id.* at 123-24 (affirming a district court's decision to call six of the twelve jurors); *see also State v. Olkon*, 299 N.W.2d 89, 109 (Minn. 1980) (stating that the district court "did not abuse its discretion in determining to call six jurors, four of whom were referred to in the allegations of misconduct"). Ultimately, the abuse-of-discretion standard requires us to examine whether the district court correctly applied the law and if the court's decision was based on facts in the record. *Riley*, 792 N.W.2d at 833.

To investigate if any juror misconduct occurred during Hernandez's trial, the district court held a limited *Schwartz* hearing, at which only one juror, D.G., testified. The district court drafted four questions ahead of time and read them to D.G. verbatim. They were:

> After you began deliberations in this case it was about 1:30 p.m. on October 10th, the jury returned its verdicts at 1:21 p.m. on October 11th the next day. During your deliberations was there any physical violence against you to reach a verdict?
>
> During your deliberations was there any physical violence against any members of the jury panel in order to reach a verdict?

> Was there any threat of physical violence against you to reach a verdict?
>
> And was there any threat of physical violence against any member of the jury to reach a verdict?

D.G. answered "no" to each question except the third, where he answered, "No, not direct." Hernandez's attorney argued that this response implied there was an indirect threat. The court asked D.G. if there was an indirect threat made by another juror to him and asked D.G. for that juror's exact wording. D.G. answered, "[T]here was a – there was a woman who said, 'I'm not coming back here tomorrow to deliberate, I'd rather go to jail.'" The district court determined this was not a threat, noting that D.G. did not reveal any new information and the most reasonable interpretation of this comment was that this juror would "rather be held in contempt of court than return for another day of deliberations."

We agree with the district court's reasoning. The parties and the district court were already aware of this comment prior to the *Schwartz* hearing. As a result, D.G.'s testimony did not produce any new information showing a prima facie case of juror misconduct. *See State v. Church*, 577 N.W.2d 715, 720 (Minn. 1998) (stating that standard for granting a *Schwartz* hearing). We also agree that the comment to D.G. did not contain a threat. A threat, broadly speaking, requires "an intention to inflict pain, injury, evil, or punishment," or some "indication of impending danger or harm." *The American Heritage Dictionary of the English Language* 1813 (3d ed. 1992). The comment, "I'm not coming back here tomorrow to deliberate, I'd rather go to jail," rings more of hyperbole and exaggeration rather than a genuine intention to inflict harm on D.G. We agree with the district court that the more reasonable understanding of the comment is as an expression of frustration on the part of the juror herself. Framed in the context of a long deliberation process, the comment is best seen as the juror potentially exposing herself to contempt of court for not showing up the next day.

But Hernandez claims that the court's decision to only call D.G. to testify at the *Schwartz* hearing was an abuse of discretion. We note that the supreme court upheld a district court's decision to call just one juror in *State v. Powers*, where the juror had spoken with the prosecutor over lunch. 654 N.W.2d 667, 678 (Minn. 2003). Hernandez attempts to distinguish his case from *Powers* by pointing to the fact that the juror from his trial who was at the heart of the misconduct—the juror who supposedly threatened D.G.—was never called. We are not persuaded. The purpose of a *Schwartz* hearing is to investigate potential juror misconduct. *State v. Martin*, 614 N.W.2d 214, 226 (Minn. 2000). How a court investigates that misconduct falls within its discretion, which we will only reverse if the district court misapplies the law or relies on facts not supported by the record. *Riley*, 792 N.W.2d at 833. Neither occurred in this case. Further, D.G.'s comments to the Innocence Project did not reveal any new allegations warranting further consideration by the district court.[5]

[5] To the extent that D.G.'s comments to the Innocence Project concerning a female juror "who took over deliberations and would not allow other jurors to express their opinions" was new information, it did not warrant a new *Schwartz* hearing. The district court noted that there was an eight-month lapse between Hernandez's verdict and the day D.G. approached the Innocence Project, and if there was a serious concern for the integrity of the process, the court reasoned, D.G. would not have waited so long to report the concerning comment.

For the reasons discussed, we conclude the district court did not abuse its discretion in holding a *Schwartz* hearing and calling a single juror to testify. The court was probing for evidence that juror misconduct occurred during Hernandez's trial, yet the juror who allegedly received this misconduct failed to convince the court that there was any misconduct. Lacking reasonable support for allegations of misconduct, the court was within its discretion to end its inquiry and conclude the *Schwartz* hearing without hearing from additional jurors.

Affirmed.