STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1650

State of Minnesota,
Respondent,

vs.

Sean Garrison McNerthney,
Appellant.

Filed October 28, 2024
Affirmed
Harris, Judge

Hennepin County District Court
File No. 27-CR-23-149

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

Mary F. Moriarty, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant argues that his domestic assault-fear conviction must be reversed because the victim's testimony is uncorroborated, and the state's remaining evidence is insufficient to sustain the jury's verdict. Appellant raises additional arguments in a pro se supplemental

brief. Because we conclude there is sufficient evidence to sustain appellant's conviction, we affirm.

FACTS

In January 2023, respondent State of Minnesota charged appellant Sean Garrison McNerthney with felony domestic assault-fear under Minnesota Statutes section 609.2242, subdivision 4 (2022), based on a domestic incident with his girlfriend, N.P., on December 29, 2022.[1] The complaint alleged that on December 30, 2022, police officers responded to a domestic assault report at N.P.'s apartment building lobby. When officers arrived, N.P. was "visibly shaken, had choppy speech, and was breathing heavily" and "continuously trembled and spoke in a nervous tone of voice." N.P. reported that McNerthney threatened to take her children from her and that "she was 'petrified' when [McNerthney] threatened to kill her and that she believed he would kill her."

The complaint also alleged that McNerthney had four prior domestic violence-related convictions, which would make a conviction on the charge a felony-level domestic assault crime. *See* Minn. Stat § 609.2242. subd.4 (stating a person is guilty of felony domestic assault if the domestic assault was committed "within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions").

A jury trial began in late March 2023, and before the jury was sworn in, McNerthney waived his right to counsel and petitioned the court to proceed as a self-represented litigant.

[1] The assault took place on December 29, 2022, and N.P. left the apartment that evening. N.P. called 911 the following day and met with police in the apartment building lobby.

The court granted his petition and appointed advisory counsel. At trial, McNerthney stipulated that he had two or more domestic violence-related convictions within the last ten years. Therefore, McNerthney's trial focused solely on whether he committed domestic assault against N.P. on December 29.

On March 30, the state called D.K., a manager from the dispatch division at the Hennepin County Sheriff's Office. D.K. testified about 911 dispatch procedures and the call made by N.P. on December 30, 2022. The recording of the 911 call was played for the jury.

The state called three additional witnesses: victim N.P.; the responding police officer, N.C.; and the detective, E.W. N.P. testified that she and McNerthney began dating in July 2022 and that he lived with her and her six-year-old daughter. She testified that on December 29, McNerthney "tried to kill [her]" during a dispute in her apartment. N.P. explained that McNerthney placed his arm around her neck and slammed her head against the wall. She also testified that, earlier that day, McNerthney had "flung" her then five-year-old daughter "across the bed" because "he was tired of listening to her." N.P. also testified that although she was afraid that McNerthney was going to kill her, she could not call 911 because he had broken her phone. Later that night, while McNerthney was in the bathroom, N.P. and her daughter left for a hotel. The next day, N.P. contacted the Hopkins police department and reported the incident.

On March 31, McNerthney tested positive for COVID-19, and the district court continued the trial until April 24. On April 24, the district court granted the state's request

to continue the trial for a few weeks because N.P. was unavailable to finish cross-examination.

When trial resumed on June 6, the state called Officer N.C., who testified that he met with N.P. in the police department lobby and that N.P. was in "a very frantic state," and reported that McNerthney said to her, "I'm going to kill you." He also testified that N.P. did not report any injuries to him and that he did not notice anything abnormal on her face. Officer N.C. testified that at N.P.'s residence, McNerthney was noncompliant with other officers' orders and was eventually arrested.

Then the state called Detective E.W. from the Hopkins police department, who testified about McNerthney's arrest. McNerthney did not testify. His only witness was a third officer of the Hopkins police department, who testified about a disturbance he responded to on December 24, 2022, at N.P.'s apartment building.

The jury found McNerthney guilty of felony domestic assault-fear. The court entered the conviction and sentenced McNerthney to a 33-month prison sentence. McNerthney appeals.

DECISION

I. There is sufficient evidence to support McNerthney's conviction of felony domestic assault-fear.

McNerthney argues that N.P.'s sole, uncorroborated testimony is insufficient to uphold his conviction for felony domestic assault-fear under Minnesota Statutes section 609.2242, subdivision 4. We are not persuaded.

To convict a defendant of domestic assault-fear, the state must prove, in relevant part, that the defendant committed "an act with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.2242, subd. 1 (2022). Assault-fear is a specific-intent crime, as evidenced by the legislature's use of the words "with intent to." *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). Thus, the state needed to prove that McNerthney acted with intent to cause N.P. fear of immediate bodily harm or death.

"[I]ntent is a state of mind that is usually proved with circumstantial evidence." *State v. Balandin*, 944 N.W.2d 204, 217 (Minn. 2020); *Stiles v. State*, 664 N.W.2d 315, 320 (Minn. 2003) ("Intent is . . . generally proved . . . by drawing inferences" from the evidence such as the victim's reaction, the type of crime, the events surrounding the crime, the relationship between the defendant and the victim, the defendant's words and actions, and "the idea that a person intends the natural consequences of his or her actions."); *State v. Smith*, 825 N.W.2d 131, 136-37 (Minn. App. 2012) (victim's reaction is circumstantial evidence showing intent); *accord State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000) ("A state of mind generally is proved circumstantially, by inference from words and acts of the actor both before and after the incident."). Here, the state proved intent using circumstantial evidence. Because intent is a state of mind, it is generally proved by considering a defendant's act in context. *State v. Thompson*, 544 N.W.2d 8, 11 (Minn. 1996). "Intent is an inference to be drawn by the jury from the totality of the circumstances." *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989).

If circumstantial evidence is used to prove an element of the conviction challenged on appeal, appellate courts apply "a heightened two-step standard" of review to the

sufficiency of the evidence. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017); *see also State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we must "identify the circumstances proved," disregarding evidence inconsistent with the verdict. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Appellate courts "construe conflicting evidence in the light most favorable to the verdict." *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Second, we must "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Silvernail*, 831 N.W.2d at 599 (citation omitted); *see also State v. Collins*, 580 N.W.2d 36, 44 (Minn. App. 1998) ("[F]or a conviction requiring specific intent to stand, such intent must be the only reasonable inference when the evidence as a whole is viewed in the light most favorable to the state."). We "give no deference to the jury's choice between reasonable inferences." *Harris*, 895 N.W.2d at 601. The court considers the circumstantial evidence "as a whole" when completing this step of the analysis. *Id.*; *see also State v. Andersen*, 784 N.W.2d 320, 332 (Minn. 2010) ("[W]e do not review each circumstance proved in isolation. Instead, we must consider whether the circumstances presented are consistent with guilt and inconsistent, on the whole, with any reasonable hypothesis of innocence." (quotation omitted)).

The circumstances proved include (1) N.P.'s testimony that McNerthney threatened to kill her; (2) N.P.'s testimony that she believed McNerthney would in fact kill her; (3) N.P. provided a prior consistent statement to Officer N.C. that she believed McNerthney's threats to kill her were legitimate and that he would, in fact, kill her. (4) McNerthney placed his arm around N.P.'s neck in a chokehold; (5) McNerthney

slammed N.P.'s head against the wall; (6) McNerthney was yelling and swearing at N.P. on the day of the offense; (7) the 911 call and audio recordings of N.P.'s victim statement in which she answered affirmatively that McNerthney said the words "I'm going to kill you."; (8) McNerthney was significantly larger and stronger than N.P.[2]; (9) When N.P. contacted 911 the day after the incident she was emotional and crying; (10) Officer N.C.'s testimony that N.P. was "in a very frantic state"; (11) testimony that the present incident occurred four days after another incident in which police were called and McNerthney stopped N.P from answering the door when police arrived at the apartment; and (12) when McNerthney was arrested by police he made comments like "She got scared."

We conclude that when viewed in the light most favorable to the verdict, there is sufficient evidence to permit the jury to find that McNerthney acted with intent to cause N.P. fear of immediate bodily harm or death. McNerthney told N.P. "I'm going to kill you" which demonstrates his intent to cause N.P. fear of immediate bodily harm or death. This testimony was corroborated in multiple ways. *See State v. Burch*, 170 N.W.2d 543, 552 (Minn. 1969) (holding that "a verdict may be based on the testimony of a single witness no matter what the issue"). McNerthney's words were coupled with actions of a physical assault. The natural and probable result of McNerthney's actions in placing his arm around N.P.'s neck in a chokehold and slamming N.P.'s head against the wall was causing N.P. fear of immediate bodily harm and of potentially further violence by showing he could take physical action against her. Given the character of McNerthney's threats, and actions,

[2] McNerthney testified that he weighs184 pounds and can bench press 280 pounds, while N.P. weighs approximately 110 pounds.

especially with the size disparity between him and N.P., the natural and probable result was causing N.P. fear. Additionally, N.P.'s reaction of leaving the home with her minor child and calling 911 lead only to the inference that McNerthney caused N.P. to fear immediate bodily harm. N.P.'s emotional reaction to McNerthney can be used as evidence of intent. *See State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997) (The jury may consider both the conduct of the offender and the reaction of the victim. As to the offender, "the jury may infer a person intends the natural and probable consequences of his actions."); *see also State v. Wallace*, 558 N.W.2d 469, 473 (Minn. 1997) (A victim's reaction to a defendant's conduct is also "evidence relevant to proving [defendant's] intent.") When N.P. sought help from the police the day after the assault she was still terrified because she believed appellant would in fact kill her. The jury also heard testimony that five days prior to the present incident, another incident in which police were called to the parties' apartment and McNerthney stopped N.P from answering the door when police arrived at the apartment. *See State v. Andrews*, 388 N.W.2d 723, 728 (Minn. 1986) ("Events both before and after," as well as during the offense, "are relevant to the totality of the circumstances" from which an inference of intent may be drawn.) Accordingly, there is sufficient evidence to support the jury's finding that McNerthney intended to cause fear in N.P.

The second step of the analysis is to determine whether the circumstances proved are consistent with guilt and inconsistent with a reasonable alternative hypothesis of innocence. McNerthney's sole argument is that the evidence was insufficient because there were significant reasons to question N.P.'s credibility. McNerthney claimed that N.P.'s testimony was uncorroborated, that certain aspects of her testimony at trial differed from

prior statements made to police officers and the victim advocate, that she testified that she had not called 911 but later remembered making the call after a recording was played on redirect examination, and some of her statements were in response to leading questions. This argument is also unpersuasive. The supreme court has held that "a conviction can rest on the uncorroborated testimony of a single credible witness." *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted). And "the jury is in the best position to evaluate the credibility of witnesses and weigh the evidence regarding intent." *State v. Davis*, 656 N.W.2d 900, 905 (Minn. App. 2003). "[T]he jury may infer that a person intends the natural and probable consequences of his actions and a defendant's statements as to his intentions are not binding on the jury if his acts demonstrated a contrary intent." *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997).

Here, the jury had the opportunity to examine all the evidence presented at trial and determine the credibility of each witness, including whether any inconsistencies, leading questions, or N.P.'s failure to initially remember her 911 call rendered her testimony not credible. McNerthney also had the opportunity to call into question the credibility of N.P. during cross-examination, but the jury still found N.P.'s testimony credible. In sum, there was sufficient evidence for the jury to find N.P.'s testimony credible and that her consistent out-of-court statements sufficiently corroborated her trial testimony.

Because the inferences that point to guilt are reasonable and the circumstances proved exclude any reasonable inference other than guilt, the evidence was sufficient to support McNerthney's conviction for domestic assault-fear.

II. McNerthney's arguments in his pro se supplemental brief are forfeited.

McNerthney makes four arguments in his pro se brief. First, he claims that on March 30, 2023, he was "forced to represent himself with COVID-19." Second, he argues that the long delays between trial were impermissible. Third, he appears to assert that the district court erred in rejecting text messages and videos stored on his phone as evidence. And fourth, McNerthney seems to argue that the district court should not have permitted him to represent himself because he was taking medication and had COVID-19 at the time.

A reviewing court "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority." *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008); *see also State v. Krosch*, 642 N.W.2d 713, 719-20 (Minn. 2002) (dismissing appellant's arguments because the pro se brief contained "no argument[s] or citation[s] to legal authority in support of the allegations"); *State v. Andersen*, 871 N.W.2d. 910, 915 (Minn. 2015) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." (quotation omitted)).

Because the assertions contained in McNerthney's brief are unsupported by law and fact, we deem McNerthney's arguments forfeited.

Affirmed.