This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1662

State of Minnesota,
Respondent,

vs.

Michael Romeo Geraci,
Appellant.

Filed October 30, 2023
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CR-22-2016

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

John J. Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Kirk, Judge.[*]

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Ramsey County jury found Michael Romeo Geraci guilty of the felony offense of stalking. We conclude that the evidence is sufficient to support the jury's verdict and that the district court did not commit reversible error by not ordering a professional assessment of Geraci's need for mental-health treatment. Therefore, we affirm.

FACTS

In April 2022, the state charged Geraci with one count of felony stalking, in violation of Minn. Stat. § 609.749, subd. 5(a) (Supp. 2021). The charged offense requires proof of, among other things, "two or more acts within a five-year period that violate or attempt to violate the provisions of any of" 17 criminal statutes. *Id.*, subd. 5(b). The state alleged that, between December 2021 and February 2022, Geraci committed the offense of stalking by repeatedly violating or attempting to violate the statutes criminalizing domestic assault and/or threats of violence. *Id.*, subd. 5(b)(3), (5) (referencing Minn. Stat. §§ 609.713, .2242 (2020)). In the probable-cause portion of the complaint, the state alleged that Geraci engaged in such conduct toward his wife, A.S.A., on three occasions in December 2021.

The case was tried to a jury on four days in July 2022. The state presented six witnesses; the defense presented one witness, Geraci.

The states' first witness was A.S.A., who testified about the three incidents described in the complaint. First, she testified that, on December 5, 2021, she and Geraci argued and, when she attempted to leave their apartment, Geraci hit her in the face, causing

her to bleed. A.S.A. then left the apartment and drove to her parents' home in Washington County. Second, she testified that, on December 15, 2021, she and Geraci again argued and, when she attempted to leave, Geraci physically blocked her access to a stairwell, which caused her to fall down the stairs, resulting in injuries. A.S.A. then left the apartment and stayed in a hotel for two nights because she believed that it would have been unsafe for her, her young child, and her parents if she had stayed at her parents' home. Third, A.S.A. testified that, on December 26, 2021, she and Geraci again argued at their apartment and Geraci hit her on her shoulder with a baby gate, causing a deep gash in her skin. A.S.A. again left the apartment because she believed that it was not a safe environment for her and her child.

The state also sought to prove its case by introducing evidence that Geraci violated two pre-trial domestic-abuse-no-contact orders (DANCOs) that prohibited him from having contact with A.S.A. The first DANCO was issued in March 2022 in another criminal case, and the second DANCO was issued in May 2022 in this case. A.S.A. testified that Geraci called her from jail on a regular basis in early 2022 despite the DANCO orders. She explained that she initially answered his telephone calls in the hopes that their relationship could be improved. She testified that she stopped answering his telephone calls when she came to believe that Geraci had been in a relationship with another woman. A St. Paul police officer testified that Geraci placed more than 100 telephone calls to A.S.A. from the county jail but that A.S.A. did not answer any of Geraci's calls after early May 2022.

In the defense case, Geraci testified that the December 5, 2021 argument involved some pushing and shoving and that A.S.A. probably suffered "some harm." Geraci testified that, on December 15, 2021, he grabbed A.S.A. to prevent her from leaving and, when he let go, she fell down the stairs. Geraci testified that, on December 26, 2021, he did not hit A.S.A. on her shoulder and believes that she may have cut her shoulder on the edge of a couch. Geraci admitted that he knew that the DANCOs prohibited him from having contact with A.S.A. but that he nonetheless spoke with her by telephone on a daily basis while he was in jail. He testified that he never threatened A.S.A. during those telephone calls.

The jury found Geraci guilty. At sentencing, Geraci requested a downward dispositional departure so that he could receive chemical-dependency treatment. The district court imposed a presumptive sentence of 38 months of imprisonment. Geraci appeals.

DECISION

I. Sufficiency of Evidence

Geraci first argues that the evidence is insufficient to prove two elements of felony stalking.

A person engages in felony stalking if (1) he does "two or more acts within a five-year period that violate or attempt to violate the provisions of any of" 17 criminal statutes; (2) he "knows or has reason to know" that his acts "would cause the victim under the circumstances to feel terrorized or to fear bodily harm"; and (3) he "causes this reaction on the part of the victim." Minn. Stat. § 609.749, subd. 5(a); *see also id*., subd. 5(b).

In analyzing an argument that the evidence is insufficient to support a conviction, this court ordinarily undertakes "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We will not overturn a verdict if the jury, "acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Ortega*, 813 N.W.2d at 100.

The above-described standard of review applies so long as a conviction is adequately supported by direct evidence. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Direct evidence is "[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (alteration in original) (quotation omitted). Circumstantial evidence, on the other hand, is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). A conviction depends on circumstantial evidence if proof of the offense, or a single element of the offense, is based solely on circumstantial evidence. *See State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014).

If a conviction depends on circumstantial evidence, we apply a heightened standard of review with a two-step analysis. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). "The first step is to identify the circumstances proved." *Id.* "In identifying the circumstances proved, we assume that the jury resolved any factual disputes in a manner that is consistent

with the . . . verdict." *Id.* The second step is to "examine independently the reasonableness of [the] inferences that might be drawn from the circumstances proved" and "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (alteration in original) (quotations omitted). At the second step, we do not give deference to the jury's verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

A.

Geraci first contends that the evidence is insufficient to satisfy the third element, that his actions caused A.S.A. to "feel terrorized or fear bodily harm." In this context, to "feel terrorized" means to "to feel extreme fear resulting from violence or threats." *State v. Franks*, 765 N.W.2d 68, 74 (Minn. 2009).

We need not decide whether A.S.A. felt terrorized because the evidentiary record contains abundant direct evidence that A.S.A. feared bodily harm. She suffered bodily harm in each of the three incidents described in the complaint. After each incident, she left the apartment that she shared with Geraci to find a safer place. Her reasons for doing so make clear that she feared bodily harm. She testified that she felt "frustrated and hurt and . . . scared" after the December 5, 2021 incident, in which Geraci hit her in the face. She testified that, after the December 15, 2021 incident, in which a physical struggle with Geraci resulted in her falling down stairs, she felt "sad and scared and confused." She stayed in a hotel because she did not feel safe going to her parents' home, which she said was "well known" to Geraci, which made her fearful for the safety of her child and her parents. She testified that she did not renew her lease at the end of 2021 because she did

not believe that the apartment was "a safe environment." A.S.A. also testified that Geraci "has led me to believe that he's capable of some very scary things, and that implication that he has on my life scares me." This evidence is more than sufficient to prove that Geraci's violations of the domestic-assault statute caused A.S.A. to fear bodily harm.

B.

Geraci also contends that the evidence is insufficient to satisfy the second element, that he knew or had reason to know that his conduct would cause A.S.A. to feel terrorized or fear bodily harm. Specifically, he contends that he never threatened A.S.A., that A.S.A. told him that she loved him when he called her from jail, and that A.S.A. stopped answering his telephone calls for an unrelated reason, namely, that she believed that he had had a relationship with another woman.

These contentions focus on the period in early 2022 when Geraci was in jail. Geraci ignores the period in December 2021 when he is alleged to have engaged in domestic assault toward A.S.A. During that period, Geraci had reason to know that his repeated assaults would cause A.S.A. to fear bodily harm because, on three occasions, he actually caused bodily harm to A.S.A. and, each time, she left the apartment they shared for a safer place. A jury may infer that a person intends the natural and probable consequences of his actions. *See State v. Hough*, 585 N.W.2d 393, 396 (Minn. 1998). In this case, there is no rational inference that Geraci did not know and had no reason to know that his conduct toward A.S.A. would cause her to fear bodily harm. Thus, the evidence is sufficient to establish the second element of the offense.

In sum, the evidence is sufficient to support the conviction.

II. Mental-Health Evaluation

Geraci also argues that the district court erred by not ordering a professional assessment of Geraci's need, if any, for mental-health treatment.

If a person is convicted of felony stalking, the district court "shall order an independent professional mental health assessment of the offender's need for mental health treatment." Minn. Stat. § 609.749, subd. 6(a) (2020). "The court may waive the assessment if an adequate assessment was conducted prior to the conviction." *Id*. "If the assessment indicates that the offender is in need of and amenable to mental health treatment, the court shall include in the sentence a requirement that the offender undergo treatment." *Id.*, subd. 6(c).

It is undisputed that the district court did not order a professional assessment of Geraci's need for mental-health treatment. It appears that neither party raised the issue in the district court. Because Geraci did not object to the lack of an assessment, we consider his argument according to the plain-error test. *See* Minn. R. Crim. P. 31.02. Under the plain-error test, an appellant is entitled to relief on an issue for which no objection was made at trial only if (1) there is an error, (2) the error is plain, and (3) the error affects the appellant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If these three requirements are satisfied, the appellant also must satisfy a fourth requirement, that the error "seriously affects the fairness and integrity of the judicial proceedings." *State v. Little*, 851 N.W.2d 878, 884 (Minn. 2014).

The state contends that the district court did not commit plain error because the statute allows a district court to waive the assessment "if an adequate assessment was

conducted prior to the conviction." Minn. Stat. § 609.749, subd. 6(a). The district court did not expressly waive the requirement, but the state contends that the district court did so impliedly and that the record would support a finding that Geraci had a prior adequate assessment. It is questionable whether the record provides enough information for a determination that an "adequate" assessment was conducted at a meaningful time. *See id.*

We need not determine whether Geraci can satisfy the first and second requirements of the plain-error test because he cannot satisfy the third requirement, that the asserted error affected his substantial rights. *See Griller*, 583 N.W.2d at 740. Geraci contends that he was prejudiced by the absence of a mental-health assessment because it "prevented [him] from presenting a complete argument in support of his request for a downward dispositional departure" and that "it was imperative that the court consider a completed assessment before ruling on [his] argument that he was amenable to treatment in a probationary setting." This contention does not align with Geraci's argument for a downward dispositional departure. Geraci requested a departure on the ground that it would allow him to obtain treatment for his drug addiction. His attorney did not mention mental illness. Similarly, when allowed to speak in allocution, Geraci personally asked the district court to allow him to participate in drug court but did not refer to his mental health. Accordingly, the absence of a current mental-health assessment did not affect the outcome of Geraci's request for a downward dispositional departure.

Thus, the district court did not commit reversible error by not ordering a professional assessment of Geraci's need for mental-health treatment.

III. *Pro Se* Arguments

Geraci has filed a *pro se* supplemental brief in which he makes three additional arguments.

First, Geraci argues that the district court erred by admitting evidence related to the December 5, 2021 incident. Geraci argues that the admission of that evidence is contrary to rule 404(b) of the rules of evidence and *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965). Rule 404(b) generally prohibits the admission of "[e]vidence of *another* crime, wrong, or act." Minn. R. Evid. 404(b) (emphasis added). The rule does not apply to evidence that is offered to prove the act that is alleged to be a crime in that case. The complaint in this case specifically alleged that Geraci engaged in domestic assault on December 5, 2021, and that his conduct on that date is one of the predicates of felony stalking. Thus, the district court did not err by admitting evidence related to the December 5, 2021 incident.

Second, Geraci argues that the statute that sets forth the offense of felony stalking is "unconstitutionally vague and violates the Due Process Clauses of the Fifth and Fourteenth Amendments." Geraci did not make such an argument in the district court. "[T]he constitutionality of a statute cannot be challenged for the first time on appeal." *State v. Engholm*, 290 N.W.2d 780, 784 (Minn. 1980); *see also State v. McCauley*, 820 N.W.2d 577, 583 (Minn. App. 2012). Thus, Geraci has forfeited his constitutional challenge to the felony-stalking statute.

Third, Geraci argues that he received ineffective assistance of counsel on the grounds that his attorney did not "challenge [the] original complaint," did not challenge the state's *Spreigl* evidence, did not file a motion to dismiss, and did not move to suppress

evidence. "Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal." *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). A post-conviction proceeding allows for the development of "'additional facts to explain the attorney's decisions,' so as to properly consider whether a defense counsel's performance was deficient." *Id.* (quoting *Black v. State*, 560 N.W.2d 83, 85 n.1 (Minn. 1997)). An appellate court may consider an ineffectiveness argument on direct appeal only if the trial record is sufficiently developed such that the claim can be decided based on the trial record. *Torres v. State*, 688 N.W.2d 569, 572 (Minn. 2004). In this case, however, the factual record does not allow this court to evaluate the performance of Geraci's trial attorney and determine whether Geraci's claims have merit. Thus, we decline to address the claims on direct appeal. Geraci's right to assert the claims in a post-conviction action is preserved. *See State v. Christian*, 657 N.W.2d 186, 194 (Minn. 2003); *Gustafson*, 610 N.W.2d at 321; *State v. Xiong*, 638 N.W.2d 499, 504 (Minn. App. 2002), *rev. denied* (Minn. Apr. 16, 2002).

Affirmed.