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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2024**

State of Minnesota,
Respondent,

vs.

Charles Anthony Maddox, Jr.,
Appellant.

**Filed October 29, 2012
Affirmed
Kirk, Judge**

Scott County District Court
File No. 70-CR-08-26403

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

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Frederic Bruno, Bruno Law, Minneapolis, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Bjorkman, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from his conviction of second-degree murder, appellant argues that the
district court erred by (1) denying his motion to suppress evidence obtained as a result of

the search of his home; (2) failing to suppress evidence obtained as a result of his unlawful arrest and search; (3) denying his request to remove a juror for cause; (4) denying his request to include CRIMJIG 11.37 in the jury instructions; and (5) incorrectly instructing the jury on self-defense. Finally, he argues that the evidence was insufficient to support the jury's verdict. We affirm.

FACTS

Appellant and R.A.M. married in 2003, and R.A.M. filed for divorce in late September 2008. Although they were in the process of a divorce, both appellant and R.A.M. continued to live in the townhouse they owned. A major point of contention in the divorce was who would be awarded their two dogs. At the beginning of November, appellant asked R.A.M. to give him half of her 401(k) account and one of the dogs in the divorce; R.A.M. was very upset by the request.

On November 11, the editor of the newspaper where R.A.M. worked as a reporter requested that the police perform a welfare check because R.A.M. had not shown up for work. The editor reported that R.A.M. had never failed to call in when she was going to be late or absent during the five years that she worked for the newspaper. She reported that she had received a text message from R.A.M.'s phone at about 9:00 a.m. that stated that R.A.M. had a doctor's appointment and would be late to work, but that it was unusual for R.A.M. to communicate with her via a text message. She further reported that she had tried to call R.A.M. throughout the day but the calls went straight to voicemail. The editor told police that R.A.M. was going through a divorce and that

R.A.M. had told her coworkers that she was worried for her safety. She also told the police that R.A.M. had a neighbor, S.N., who was also a good friend.

At approximately 4:40 p.m., Officer Darcy White went with another officer to R.A.M. and appellant's townhouse. There were no cars in the driveway, the garage door was closed, and no one answered the door when the officers knocked. The officers looked in the sliding glass door on the ground-level patio door and a window on the side of the house, but they could only see a cat and a pair of women's shoes.

At 5:55 p.m., Officer White called S.N., who reported that she last spoke to R.A.M. at 11:30 p.m. the previous night and R.A.M. told her she had attended a school board meeting, she was planning to go to work late the next day, and she had some articles due. S.N. had also tried to call R.A.M. but her calls went straight to voicemail.

Officer White returned to the townhouse at 6:11 p.m. with two other police officers. When they arrived, appellant's truck was parked in the driveway. They rang the doorbell and appellant answered the door but did not invite them into the home. The officers noticed that appellant had two small scratches on the bridge of his nose. When questioned about the scratches, he stated that he received them when he was playing with his dog. Appellant told the officers that R.A.M. was not home and he had not heard from her but, earlier that morning, she had texted him that she was going to the doctor and then out of town. Appellant told the officers that he had returned home the previous night at midnight after watching a football game with his friend Justin. Appellant provided the officers with contact information for R.A.M.'s two sisters and her daughter, but refused to sign a missing persons report, stating that he wanted to wait to see if R.A.M. arrived in

Indiana to visit her friends and family. The officers asked appellant if they could look inside the garage for R.A.M.'s vehicle. Appellant opened the garage door and then immediately closed it; the officers did not observe a vehicle in the garage.

After returning to the police station, Officer White called R.A.M.'s sister and two of her friends in Indiana; no one had spoken to R.A.M. that day. Officer White also contacted R.A.M.'s cell phone provider, who reported that R.A.M.'s cell phone had been turned off for most of the day but was turned on at approximately 4:14 p.m. and received an incoming call, which "pinged off" a cell phone tower close by the townhouse.

At approximately 9:14 p.m., Officer White and two other officers returned to the townhouse. Appellant answered the door but did not invite them in. He told the police that he had spoken with his attorney and R.A.M. had agreed to give him the dogs and part of her 401(k). He again refused to sign a missing persons report.

As part of the investigation, Officer White attempted to verify appellant's account of where he had been the previous night. Another police officer visited the restaurant where appellant worked and learned that appellant often spent time with a friend, S.R., at a bar across the street. The officer spoke to S.R., who reported that she had watched football with appellant the night before until 11:30 p.m. After learning this information at about 10:00 p.m., Officer White again spoke to R.A.M.'s friends and relatives; none of them had heard from R.A.M., and they continued to be worried about her safety.

Detective Chris Olson prepared a search warrant application and affidavit and presented it to a district court judge at approximately 2:00 a.m. on November 12. The district court judge signed the search warrant authorizing a search of the townhouse for

R.A.M. When six police officers executed the search warrant at approximately 3:15 a.m., they observed appellant's truck in the driveway and lights on inside the home. Appellant answered the door wearing a coat and the same clothes he had been wearing earlier. After an officer gave appellant a copy of the search warrant, Officer White patted him down. Officer White asked appellant to sit on the living-room couch, and shortly after sitting down, appellant stated, "I might as well save you some time. You're going to find [R.A.M.'s] body in the garage." Based on his statement, several officers went into the garage and found a wrapped package that they believed to be a body. Detective Olson read appellant his *Miranda* rights and placed him under arrest. Later that day, the medical examiner and several Minnesota Bureau of Criminal Apprehension agents unwrapped the package, which contained R.A.M.'s body.

After an autopsy, the medical examiner estimated that, at the time R.A.M. was found, she had been dead for one to two days. The medical examiner determined that the cause of R.A.M.'s death was blunt force neck and head injuries.

The state charged appellant with second-degree murder. Appellant challenged several aspects of the investigation into R.A.M.'s disappearance, the search of the townhouse, and his arrest. After a contested omnibus hearing, the district court denied appellant's motion to suppress evidence obtained as a result of the search of his home and his person. Following a trial, the jury found appellant guilty of second-degree murder and not guilty of the lesser-included offense of first-degree manslaughter. The district court sentenced appellant to 360 months in prison. This appeal follows.

DECISION

I. The district court did not err by denying appellant's pretrial motion to suppress evidence obtained as a result of a search of his home.

Appellant argues that the district court erred by failing to suppress evidence obtained as the result of an unlawful search of his home on November 12. He challenges the search on several grounds, arguing that (1) the search warrant was invalid because it was unsupported by probable cause, lacked specificity, there was no nexus between appellant's home and the alleged crime, and a nighttime search was not justified; (2) no exigent circumstances excused the warrant requirement if the warrant was invalid; and (3) the police unlawfully intruded on the curtilage of his home.

A. Validity of the warrant.

1. Probable cause.

Appellant argues that the search warrant was not supported by probable cause. The United States and Minnesota Constitutions protect against unreasonable searches and seizures and require warrants to be supported by probable cause. U.S. Const. amend. IV; Minn. Const. art. I, § 10. When determining whether a warrant is supported by probable cause, this court affords great deference to the district court's probable-cause determination. *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). Our review is limited to "whether the judge issuing the warrant had a substantial basis for concluding that probable cause existed." *State v. Jenkins*, 782 N.W.2d 211, 222-23 (Minn. 2010) (quotation omitted).

A substantial basis for probable cause exists if the evidence described in the warrant affidavit establishes a “fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). “Elements bearing on this probability determination include information establishing a nexus between the crime, objects to be seized and the place to be searched.” *Jenkins*, 782 N.W.2d at 223. Minnesota uses a totality-of-the-circumstances approach and does not “review each component of the affidavit in isolation.” *Id.* (quotation omitted). As a result, “a collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause.” *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted). This court “is restricted to consider only the information presented at the time of the application for the search warrant.” *State v. Gabbert*, 411 N.W.2d 209, 212 (Minn. App. 1987) (quotation omitted).

Here, Detective Olson alleged the following facts in the search warrant affidavit: on November 11, R.A.M.’s employer reported to police that R.A.M. had not come to work that day, which was unusual; R.A.M.’s employer was unable to reach R.A.M. by telephone throughout the day; R.A.M.’s employer received a text message from R.A.M. that morning, although in the past they had never communicated using that method; R.A.M. had recently filed for divorce from her husband; R.A.M. told her coworkers she was concerned for her safety; R.A.M.’s neighbor had spoken with R.A.M. the previous night about several stories she was writing that were on deadline the following morning; R.A.M.’s neighbor was aware of previous violence in the home; R.A.M.’s neighbor noticed both R.A.M.’s car and appellant’s car in the driveway that morning but she had

been unable to contact R.A.M. throughout the day, which was unusual; R.A.M.'s neighbor told police that R.A.M. would not leave her two dogs alone with appellant; appellant told police officers that he did not know where his wife was but refused to sign a missing persons report; several family members and friends reported to police that they were unable to reach R.A.M.; R.A.M.'s adult daughter had received two text messages from appellant after R.A.M. filed for divorce that stated he would not allow her to leave him; appellant told police officers that he was with his friend Justin the previous night, but officers spoke with a different friend of appellant's who reported that appellant was with her; appellant refused to provide information to police officers about credit or debit cards that R.A.M. could be using; R.A.M.'s cell phone provider reported that her phone had been dead since approximately 4:00 p.m. on November 11, but a transmission for the phone occurred at 4:14 p.m. and used a cell tower that was very close to her home; appellant refused to allow officers inside the home to check for R.A.M.; and appellant was no longer returning telephone calls to the police.

Each piece of information that was alleged in the search warrant affidavit would not be enough on its own to establish probable cause that R.A.M. would be found in the townhouse. But the combination of all of the alleged facts established probable cause, including R.A.M.'s failure to show up for work, lack of contact with her family and friends, the contentious divorce proceedings and past violence in the relationship, appellant's behavior, and the information that R.A.M.'s cell phone was last used in the vicinity of the townhouse that afternoon. *See Carter*, 697 N.W.2d at 205. In view of the totality of the circumstances, the judge who issued the search warrant had a substantial

basis to conclude that probable cause existed to believe that R.A.M. or evidence concerning her disappearance would be found in the townhouse.

2. Specificity.

Appellant contends that the search warrant was a general warrant that failed to describe the items to be seized with specificity. A search warrant must “particularly describ[e] the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV; Minn. Const. art. 1, § 10. The purpose of this requirement “is to prevent law enforcement officers, in their sole discretion unlimited by the detached and neutral judgment of a magistrate, from engaging in general or exploratory searches which would violate the right of the people to be secure in their persons, houses, papers and effects.” *State v. Mathison*, 263 N.W.2d 61, 63 (Minn. 1978) (quotation omitted). A district court “is entitled to draw common-sense and reasonable inferences from the facts and circumstances given.” *State v. Egger*, 372 N.W.2d 12, 15 (Minn. App. 1985), *review denied* (Minn. Sept. 19, 1985). “[W]hen determining whether a clause in a search warrant is sufficiently particular, the circumstances of the case must be considered, as well as the nature of the crime under investigation and whether a more precise description is possible under the circumstances.” *State v. Miller*, 666 N.W.2d 703, 713 (Minn. 2003); *see also State v. Hannuksela*, 452 N.W.2d 668, 674 (Minn. 1990) (“When the officers applied for the warrant and when it was later executed . . . the officers did not definitely know all of the circumstances surrounding [the victim’s] disappearance although they were then in possession of sufficient facts to establish probable cause that he was the victim of foul play and that appellant was involved.”). The standard used “is

one of practical accuracy rather than technical nicety.” *Miller*, 666 N.W.2d at 713 (quotation omitted).

Here, the search warrant application provided that the “[a]ffiant has good reason to believe, and does believe, that” R.A.M. would be found at her townhouse. It further stated that “affiant applies for issuance of a search warrant” on the ground that “[p]robable cause exists to take the aforementioned person into custody.” In the search warrant affidavit, Detective Olson requested “a search warrant for [R.A.M.’s] residence in an effort to locate her, and/or any financial information which may be useful to investigators in a furtherance of this investigation.”

While there is no dispute that the search warrant specifically identifies R.A.M. and appellant’s townhouse, appellant contends that the search warrant’s command that R.A.M. be taken into custody is “puzzling and illogical.” But “a court may construe a warrant with reference to a supporting application or affidavit if the warrant uses appropriate words of incorporation, and if the supporting document accompanies the warrant.” *Groh v. Ramirez*, 540 U.S. 551, 557-58, 124 S. Ct. 1284, 1290 (2004). Here, because the warrant application specifically included the affidavit and the affidavit was attached, the warrant application may be considered along with the affidavit. When they are considered together, Detective Olson specifically explained that the purpose of the search of the townhouse was to locate R.A.M. and any financial records that would assist the police in the investigation of her disappearance. The search warrant described the items to be seized with particularity and was not a general warrant.

3. Nexus.

Appellant contends that the search warrant failed to establish a nexus between appellant's home and the alleged crime. To be valid, a warrant must establish "a direct connection, or nexus, between the alleged crime and the particular place to be searched." *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). "[I]nformation linking the crime to the place to be searched and the freshness of the information" are relevant factors in determining whether a nexus exists. *Id.*

Here, R.A.M.'s home was a location that she was likely to be, she was at her townhouse the last time that she was in contact with her friends and relatives, and her cell phone was used once in the late afternoon on November 11 in the vicinity of the townhouse. In addition, appellant also lived in the home, was going through a contentious divorce with R.A.M., and he refused to sign a missing persons report or allow police officers into the home to look for R.A.M. There was a sufficient nexus between the townhouse and R.A.M.'s disappearance.

4. Nighttime search.

Appellant argues that the search warrant failed to articulate a sufficient basis to support a nighttime search. The police must execute a search warrant between 7:00 a.m. and 8:00 p.m. "unless the court determines on the basis of facts stated in the affidavits that a nighttime search outside those hours is necessary to prevent the loss, destruction, or removal of the objects of the search or to protect the searchers or the public." Minn. Stat. § 626.14 (2010). The Minnesota Supreme Court has observed that, "in enacting section 626.14, the legislature recognized that entry into a residence in the middle of the night is

a greater invasion of residential privacy than entry during the daytime.” *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted). In order to balance individual privacy rights and legitimate law enforcement concerns, “the statute requires at least a finding that there is reasonable suspicion to believe a nighttime search is necessary to preserve evidence or to protect officer or public safety.” *Id.* But “the reasonable suspicion showing is not high.” *Id.* (quotation omitted).

Here, Detective Olson requested a nighttime warrant because the investigation had commenced during the daylight hours and it was night when he acquired probable cause to support the application for the warrant, he believed the object of the search was present in the location, and he had been denied access to the home. The search warrant affidavit established that there was reason for the police to believe R.A.M.’s safety was in jeopardy, that her last known location was at the townhouse, and that efforts to locate her were not exhausted until night had fallen. The search warrant established a reasonable suspicion that a nighttime search was necessary to preserve evidence or to protect R.A.M.’s safety.

Accordingly, we conclude that the district court did not err by determining that a nighttime warrant to search R.A.M. and appellant’s townhouse was necessary. Because of this conclusion, we do not address appellant’s argument that the search was not made pursuant to a valid warrant and no exigent circumstances excused the warrant requirement.

B. Curtilage.

Appellant contends that the police unlawfully intruded upon the curtilage of his home. The constitutional protection against unreasonable searches and seizures “extends to all places where an individual has a reasonable expectation of privacy, including the home and its curtilage.” *Haase v. Comm’r of Pub. Safety*, 679 N.W.2d 743, 746 (Minn. App. 2004). “A dwelling’s curtilage is generally the area so immediately and intimately connected to the home that within it, a resident’s reasonable expectation of privacy should be respected.” *Garza v. State*, 632 N.W.2d 633, 639 (Minn. 2001). However, “police with legitimate business may enter the areas of the curtilage which are impliedly open to use by the public. Thus, police may walk on the sidewalk and onto the porch of a house and knock on the door if they are conducting an investigation and want to question the owner.” *State v. Crea*, 305 Minn. 342, 346, 233 N.W.2d 736, 739 (1975).

Appellant concedes that police officers did not unlawfully invade his curtilage when they went on to his porch on November 11, but he argues that the police officers invaded his curtilage when they walked around the side and back of his townhouse. The first time the police officers went to the townhouse to perform a welfare check, they looked in the townhouse’s windows and sliding glass door. But it is undisputed that the police officers’ observations from looking in the windows—a cat and women’s shoes—did not contribute to the investigation. The district court did not err in denying appellant’s motion to suppress because there was no evidence to suppress that was obtained from the intrusion.

In sum, the district court did not err by denying appellant's pretrial motion to suppress evidence obtained as a result of the search of his home because (1) the search warrant was valid and articulated a sufficient basis to support a nighttime search; and (2) the police officers' search of appellant's curtilage did not result in any evidence.

II. The district court did not err by denying appellant's pretrial motion to suppress evidence obtained as a result of his search upon arrest.

Appellant argues that the district court erred in denying his pretrial motion to suppress evidence obtained as a result of his unlawful search and arrest. The United States and Minnesota Constitutions protect against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "[A] person has been seized if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quotation omitted). Evidence that is collected as a result of an unreasonable seizure must be suppressed. *Id.* at 99. "[W]hen reviewing a pre-trial order suppressing evidence where the facts are not in dispute and the [district] court's decision is a question of law, the reviewing court may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

Appellant contends that he was arrested when the police officers executed the warrant to search his home, despite the fact that they did not have a warrant authorizing his arrest or search. But appellant fails to recognize that the police have "the limited

authority to detain the occupants of the premises while [a] search is conducted” pursuant to a search warrant. *State v. Wynne*, 552 N.W.2d 218, 222 (Minn. 1996). This limited detention is not an arrest. *State v. Ailport*, 413 N.W.2d 140, 144 (Minn. App. 1987), *review denied* (Minn. Nov. 18, 1987). Police officers may not search an individual who is detained while a search warrant is executed, but they may conduct a pat-down search to look for weapons that could harm the officers or others who are nearby. *State v. Wasson*, 602 N.W.2d 247, 251 (Minn. App. 1999), *review granted in part* (Minn. Jan. 25, 2000).

Here, the police officers who conducted the search of appellant’s home detained him while the search was executed. An officer patted appellant down to check for weapons and then told him to sit on the couch while the officers proceeded with the search. This type of detention incident to execution of a search warrant is permissible. Appellant was only placed under arrest after he volunteered information that R.A.M.’s body was in the garage and police found the package they believed to be her body. At that point, the police had probable cause to arrest appellant and search him incident to that arrest. *See State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000) (“One exemption from the warrant requirement is that a person’s body and the area within his or her immediate control may be searched incident to a lawful arrest.”). We conclude that the district court did not err by denying appellant’s pretrial motion to suppress evidence obtained as a result of his search incident to arrest.

III. The district court did not err by denying appellant’s motion to remove a juror for cause.

Appellant argues that the district court erred in denying his request to remove a juror for cause. A party may challenge a juror for cause on several grounds, including if “[t]he juror’s state of mind—in reference to the case or to either party—satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.” Minn. R. Crim. P. 26.02, subd. 5. The court may rehabilitate the juror “if the juror states unequivocally that he or she will follow the district court’s instructions and will set aside any preconceived notions and fairly evaluate the evidence.” *State v. Prtine*, 784 N.W.2d 303, 310 (Minn. 2010). “In an appeal based on juror bias, an appellant must show that the challenged juror was subject to challenge for cause, that actual prejudice resulted from the failure to dismiss, and that appropriate objection was made by appellant.” *State v. Stufflebean*, 329 N.W.2d 314, 317 (Minn. 1983). “A reviewing court should give deference to the district court’s ruling on challenges for cause because the district court is in the best position to observe and judge the demeanor of the prospective juror.” *Prtine*, 784 N.W.2d at 310 (quotation omitted).

Here, prospective juror R.N. revealed in his juror questionnaire that his female cousin was killed by her husband. When questioned during voir dire, R.N. explained that he was “relatively close” to the cousin and he would visit her on holidays. The district court asked R.N. twice if his personal experience would affect his opinion in this case, and he responded both times that it would not. The district court and appellant’s counsel also questioned R.N. about the financial hardship he would experience if he served on the

jury due to his self-employment. Appellant's counsel challenged R.N. for cause on the ground that it would be a hardship for R.N. to be without income during the two to three weeks of trial. The district court rejected the challenge.

While appellant concedes that R.N. never made an explicit statement of bias, he contends that the record demonstrates that R.N. had a high probability of being biased based on the murder of his cousin by her husband. We disagree. Appellant is required to demonstrate actual bias or prejudice, and there is nothing in the record to indicate that R.N. was actually biased. *See Stufflebean*, 329 N.W.2d at 318 (concluding that the appellant's request for a new trial based on the deprivation of an impartial jury failed in part because the appellant failed to show actual bias or prejudice). In addition, appellant challenged R.N. for cause based on financial hardship, not due to his cousin's murder. The district court did not err by denying appellant's motion to remove juror R.N.

IV. The district court did not abuse its discretion by denying appellant's request to include CRIMJIG 11.37 in the jury instructions.

A district court is afforded "considerable latitude" in selecting jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). This court reviews jury instructions "in their entirety to determine whether they fairly and adequately explained the law of the case." *State v. Flores*, 418 N.W.2d 150, 155 (Minn. 1988). The district court's decision not to give a requested jury instruction will not be reversed absent an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996).

At trial, appellant requested that the district court use CRIMJIG 11.37 to instruct the jury and the state requested that the district court use CRIMJIG 11.26, which provides

the elements for second-degree murder. 10 *Minnesota Practice*, CRIMJIG 11.26 (2006). CRIMJIG 11.37 provides a similar instruction on the elements for second-degree murder, but it includes an instruction that “the defendant did not act in the heat of passion provoked by such words or acts as would provoke a person of ordinary self-control in like circumstances.” 10 *Minnesota Practice*, CRIMJIG 11.37 (2006). In the final instructions, the district court used CRIMJIG 11.26, over appellant’s objection. The district court also gave an instruction on lesser crimes, including an instruction on first-degree manslaughter, which included an element that “the [d]efendant acted in the heat of passion.”

Appellant contends that the district court’s second-degree murder instruction failed to present clear and complete instructions to the jury. In making this argument, appellant relies on *State v. Green*, 538 N.W.2d 698 (Minn. App. 1995), *remanded by* 541 N.W.2d 584 (Minn. 1995). In *Green*, the defendant was charged with first- and second-degree murder. 538 N.W.2d at 700. The district court instructed the jury on second-degree murder and first-degree manslaughter, but did not instruct the jury that the state had to prove beyond a reasonable doubt that the defendant did not act in the heat of passion. *Id.* On appeal, this court concluded that the district court erred by failing “to instruct the jury on the state’s burden of proof on the element of heat of passion.” 538 N.W.2d at 701.

However, the Minnesota Supreme Court remanded *Green* in light of its decision in *State v. Auchampach*, 540 N.W.2d 808 (Minn. 1995). In *Auchampach*, the state charged the defendant with three counts of first-degree murder, among other things. 540 N.W.2d

at 812. The supreme court concluded that when “the defendant is charged with premeditated murder and sufficient evidence is adduced at trial for a jury to reasonably infer that the defendant caused the death of another person in the heat of passion . . . the state has the burden to prove beyond a reasonable doubt the absence of heat of passion.” *Id.* at 818. But the supreme court held that the district court did not abuse its discretion by not instructing the jury that the state has the burden to prove that the defendant did not act in the heat of passion because “the court’s jury instructions, when viewed as a whole, were more than adequate to inform the jury of the state’s burden of proof.” *Id.*

Here, the jury instructions that the district court gave, when viewed as a whole, were adequate to inform the jury that the state had the burden of proof on all elements. In addition to providing instructions on the elements of second-degree murder and first-degree manslaughter, the district court instructed the jury that appellant was presumed innocent, that the burden of proving his guilt was on the state, and that he did not have to prove his innocence. The district court further instructed the jury to “consider these instructions as a whole and regard each instruction in the light of all of the others.” Finally, the district court instructed the jury that if it found “beyond a reasonable doubt that [appellant] has committed each element of the lesser crime, but you have reasonable doubt as to any different element of the greater crime, [appellant] is only guilty of the lesser crime.” The district court never instructed the jury that appellant had the burden of proof on any element. We conclude that the district court did not abuse its discretion by not using CRIMJIG 11.37 to instruct the jury.

V. The district court did not incorrectly instruct the jury about self-defense.

Appellant argues that the district court's self-defense instruction was erroneous. While a district court has "considerable latitude" in choosing jury-instruction language, the "instructions may not materially misstate the law." *Baird*, 654 N.W.2d at 113.

Appellant's theory at trial was that he killed R.A.M. in self-defense. During its instructions, the district court stated that "[t]here is no duty to retreat from one's own home when acting in self-defense in the home regardless of whether the aggressor is a co-resident. But the lack of a duty to retreat does not abrogate the obligation to act reasonably when using force in self-defense."

Appellant objected to this instruction at trial and again raises the same objection, arguing that it implied to the jury that appellant had a duty to retreat. We disagree. The supreme court has held that "[t]here is no duty to retreat from one's own home when acting in self-defense in the home, regardless of whether the aggressor is a co-resident. But the lack of a duty to retreat does not abrogate the obligation to act reasonably when using force in self-defense." *State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001). The district court's duty-to-retreat instruction used almost exactly the same wording as the supreme court used in *Glowacki*. The district court did not materially misstate the law regarding self-defense; thus, the district court's jury instruction was not erroneous.

VI. The evidence was sufficient to support the jury's guilty verdict.

Appellant argues that the evidence was insufficient to support the jury's verdict finding him guilty of second-degree murder. In assessing whether the evidence was sufficient to support a jury's guilty verdict, this court "determine[s] whether the

legitimate inferences drawn from the facts in the record would reasonably support the jury's conclusion that the defendant was guilty beyond a reasonable doubt." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). We "give due regard to the defendant's presumption of innocence and the State's burden of proof, and will uphold the verdict if the jury could reasonably have found the defendant guilty." *Id.* We assume that the jury believed the state's witnesses and disbelieved contrary evidence. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

A person is guilty of second-degree murder if he "causes the death of a human being with intent to effect the death of that person or another, but without premeditation." Minn. Stat. § 609.19, subd. 1(1) (2010). Appellant contends that the evidence was insufficient to prove beyond a reasonable doubt that (1) he intended to kill R.A.M.; (2) he did not act in self-defense; and (3) he did not act in the heat of passion.

A. Intent.

Appellant argues that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that he intended to kill R.A.M. "Because direct evidence of intent is rare, jurors must look to what a defendant says and does to determine whether a defendant acted with the requisite intent." *State v. Griese*, 565 N.W.2d 419, 425 (Minn. 1997) (quotation omitted). As a result, the jury may consider the totality of the circumstances in determining intent. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989). "[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 could infer intent from the testimony it heard regarding appellant’s conduct before and after R.A.M.’s death. The jury heard testimony about appellant’s past history of violence against R.A.M. *See State v. Diamond*, 308 Minn. 444, 448, 241 N.W.2d 95, 98 (1976) (“Where intent or self-defense is the controverted element of the crime, evidence of the prior relationship between defendant and decedent may be admitted to prove intent.”). The jury heard testimony about appellant and R.A.M.’s contentious divorce and their disagreement about the custody of their dogs and how to divide R.A.M.’s 401(k). *See State v. Tran*, 712 N.W.2d 540, 546 (Minn. 2006) (“Evidence of motive is relevant to show premeditation or intent.”). The jury also heard testimony about R.A.M.’s external and internal injuries. *See State v. Bock*, 490 N.W.2d 116, 120 (Minn. App. 1992) (stating that “[t]he nature of [the victim’s] injuries and the severity of the blows to his head are evidence of [the defendant’s] intent to kill” him), *review denied* (Minn. Aug. 27, 1992). Finally, the jury heard testimony about appellant’s extensive efforts to cover up R.A.M.’s murder. *See State v. Roy*, 408 N.W.2d 168, 172 (Minn. App. 1987) (concluding that the evidence was sufficient to convict the defendant of second-degree murder, in part because the defendant’s “actions after the killing were more consistent with one covering up an intentional murder than with a person unnerved by an accidental death”), *review denied* (Minn. July 22, 1987). There was sufficient evidence in the record to support the jury’s determination that defendant intended to effect the death of R.A.M.

B. Self-defense.

Appellant contends that the evidence was insufficient to prove beyond a reasonable doubt that he did not act in self-defense. A defendant has the burden of producing evidence to support a self-defense claim. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). As soon as the defendant has met his burden, the burden shifts to the state to disprove one or more of the elements of self-defense by a reasonable doubt. *Id.*

Here, the main source of evidence in the record that supports appellant's theory of self-defense is his own testimony. But the "jury, as the sole judge of credibility, [was] free to accept part and reject part of a witness' testimony." *State v. Poganski*, 257 N.W.2d 578, 581 (Minn. 1977). The jury's decision to find appellant guilty of second-degree murder establishes that it did not find his testimony credible. In addition, there is extensive evidence in the record that appellant intended to kill R.A.M. The evidence was sufficient to support the jury's determination that appellant did not act in self-defense.

C. Heat of passion.

Appellant contends that the state failed to present sufficient evidence to prove that he was not acting in the heat of passion when R.A.M. was killed. "A defendant is guilty of heat of passion manslaughter if the (1) killing was committed in the heat of passion, and (2) passion was provoked by such words or acts of another as would provoke a person of ordinary self-control under the circumstances." *State v. Quick*, 659 N.W.2d 701, 711 (Minn. 2003). The first element is subjective and focuses on the defendant's emotional status. *Id.* The second element is objective. *Id.*

Here, appellant testified that after he was arrested for R.A.M.'s murder, he told his brother that R.A.M. "came at [him] with a knife" and he "snapped." But the jury's decision to convict appellant of second-degree murder indicates that they did not find his testimony credible. *See Poganski*, 257 N.W.2d at 581. And as discussed previously, there is extensive evidence in the record that appellant acted with intent to kill R.A.M. The state presented sufficient evidence to prove that appellant was not acting in the heat of passion when he killed R.A.M.

Accordingly, we conclude that the evidence was sufficient to support appellant's conviction of second-degree murder.

Affirmed.