STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2143

State of Minnesota,
Respondent,

vs.

Malachai Tramble, II,
a/k/a Malaciah Tramble,
Appellant.

Filed December 24, 2012
Affirmed
Collins, Judge[*]

Ramsey County District Court
File No. 62-CR-11-2788

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

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

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Appellant challenges his conviction of engaging in a pattern of stalking conduct, arguing that to find the requisite underlying criminal acts, the district court erroneously cited the same acts multiple times. Appellant also challenges this and two related convictions on the ground that the district court adopted the state's proposed findings of fact, conclusions of law, verdict, and order nearly verbatim. We affirm.

FACTS

In November 2010, the district court issued an order for protection (OFP) against appellant Malachai Tramble II, in favor of Tramble's then-girlfriend, R.B. In February 2011, because R.B. sought dismissal of the OFP, the district court amended the OFP to provide "protection only," permitting Tramble to be in R.B.'s company "so long as he remains law abiding."

By mid-April 2011, the relationship between Tramble and R.B. was strained. According to R.B., they "were not really together" and she was exploring the possibility of a romantic relationship with her friend, P.K., from Chicago. P.K. planned to visit R.B. over the weekend of April 16.

On Thursday, April 14, Tramble was a guest in R.B.'s home. Tramble and R.B. planned to watch a movie, but the younger of R.B.'s two sons wanted to lay down with R.B. until he fell asleep. In response, Tramble "grabbed" R.B.'s purse, keys, and cellular telephone and began to leave R.B.'s home. The police responded to R.B.'s telephone

call, arrested Tramble, and told both R.B. and Tramble that Tramble should not return to R.B.'s home without a police escort.

On Friday, April 15, when R.B.'s children returned from school, they discovered Tramble in their home. Tramble did not have a police escort and appeared to have entered through either the bathroom or basement window. Tramble asked the older child to give him a copy of the house key, and the child complied. The child then called R.B., who called the police. Tramble left R.B.'s home before the police arrived.

Immediately following this incident, R.B. had her door locks changed and brought her children to a friend's home. Later that evening, R.B. and her friend checked on R.B.'s home. They discovered the back door open and the new locks missing. It appeared that someone had entered through the bathroom window and removed some of Tramble's property. R.B. called the police. After the incident, new door locks were immediately installed.

On Saturday, April 16, Tramble called R.B. and stated that he was with R.B.'s mother, who was hospitalized. R.B. and her friend went to the hospital and as they left, Tramble approached them and requested to retrieve more of his property from R.B.'s home. R.B. agreed, specifying that she would wait in her car with her friend. After more than an hour, Tramble's vehicle was full and R.B. did not wish to continue waiting. Tramble informed R.B. that he would return later in the day, but an acceptable time was never set.

That same day, P.K. arrived to visit R.B. That evening, while the two were out, Tramble called R.B. and informed her "[t]hat he'd been to the house and that he got his

stuff and that he . . . knew that [R.B.] was going to have company, and if it's the kind of company he thought [R.B.] was going to have that he would shoot the both of [them]." When R.B. and P.K. returned to R.B.'s home, the basement window was kicked in and R.B.'s new bedding, among other things, was missing. R.B. called the police.

On Sunday, April 17, Tramble telephoned R.B. and told her to expect to be upset about something. Tramble would not disclose why R.B. would be upset, and R.B. asked him why he took her bedding. Tramble replied that he had been watching her and said, "I told you that if you slept with anyone in my bed that I would shoot you and that person, too."[1] R.B. called the police.

On Monday, April 18, R.B. informed Tramble that she was removing the rest of his property from her garage. R.B. placed Tramble's belongings in her yard, in a cart. When Tramble came to collect his belongings, R.B. called the police. The police arrested Tramble on the spot.

Tramble was subsequently charged with two counts of felony stalking, in violation of Minn. Stat. §§ 609.749, subds. 2(1), 4(a), 5(a) (2010), and one count of terroristic threats, in violation of Minn. Stat. § 609.713, subd. 1 (2010). Following a bench trial, the district court found Tramble guilty of all charges. The district court sentenced appellant to 43 months' imprisonment on count one, felony stalking by engaging in a pattern of stalking conduct. This appeal followed.

[1] By this day, R.B. also suspected that Tramble had damaged her garage and vehicle.

D E C I S I O N

I.

Tramble asks us to reverse his conviction of engaging in a pattern of stalking conduct and to remand for additional findings as to whether he committed "two separate and discrete criminal acts." Our review of a bench trial is the same as in a jury trial. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). We view the evidence in the light most favorable to the verdict and assume that the fact-finder disbelieved any testimony conflicting with that verdict. *Id*.

A person is guilty of felony stalking if the person

> engages in a pattern of stalking conduct with respect to a single victim or one or more members of a single household which the [person] knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim[.]

Minn. Stat. § 609.749, subd. 5(a). A "pattern of stalking conduct" is "two or more acts within a five-year period that violate or attempt to violate the provisions of any of [16 enumerated statutes] or a similar law" of another jurisdiction. *Id.*, subd. 5(b) (2010). The enumerated statutes include the offenses of stalking, terroristic threats, violations of domestic abuse OFPs, burglary, and criminal damage to property. *Id.* To prove a pattern of stalking conduct, the underlying criminal acts need not be convictions. *State v. Richardson*, 633 N.W.2d 879, 886 (Minn. App. 2001). When a person is convicted of multiple counts of a pattern of stalking conduct, each count must be supported by "at least two separate and discrete criminal acts against a single individual[.]" *Id.* at 887.

Tramble contends that, even though the district court found four qualifying types of underlying criminal acts—stalking, terroristic threats, violation of an OFP, and third-degree burglary—the district court did not clearly find "two separate and discrete criminal acts." Because the district court cited certain conduct, including threatening R.B. and taking things after unlawfully entering her residence, in connection with multiple offenses, Tramble argues that a remand for additional findings is necessary. We disagree.

The district court's findings establish at least six discrete, qualifying criminal acts. These include: (1) on the night of April 14, 2011, Tramble violated an OFP; (2) on the afternoon of April 15, Tramble committed third-degree burglary; (3) on the night of April 15, Tramble committed third-degree burglary; (4) on the night of April 16, Tramble committed third-degree burglary; (5) on April 16, Tramble made terroristic threats; and (6) on April 17, Tramble made terroristic threats. *See* Minn. Stat. § 609.749, subd. 5(b). Each of these discrete acts could also be characterized as stalking. *See id.*, subd. 1 (2010). Because the district court's decision clearly demonstrates that the state met its burden of proving at least two qualifying, underlying acts, the district court did not err by convicting Tramble of a pattern of stalking conduct. Moreover, Tramble concedes on appeal that "some of [his] conduct, such as the terroristic threats and the entry into the home, occurred more than once." Because Tramble was convicted of just one count of engaging in a pattern of stalking conduct, this concession renders his argument without merit, and a remand is unwarranted. *See* Minn. Stat. § 609.749, subd. 5 (2010).

II.

Tramble argues that the district court clearly erred by adopting "nearly verbatim the state's proposed findings, conclusions of law, verdict and order." This practice, standing alone, is not reversible error. *Pederson v. State*, 649 N.W.2d 161, 163 (Minn. 2002). But nearly verbatim adoption of one party's submission is hardly commendable and calls into question the independent assessment of the case by the district court. *Id.*; *Dukes v. State*, 621 N.W.2d 246, 258 (Minn. 2001). This is particularly true when the district court solicits findings from the prevailing party after announcing its decision. *Anderson v. City of Bessemer*, 470 U.S. 564, 571-72, 105 S. Ct. 1504, 1510 (1985). When reviewing a district court's verbatim adoption of one party's proposed findings, we will reverse only clearly erroneous findings. *Dukes*, 621 N.W.2d at 258-59.

Here, before announcing its decision, the district court asked each party to prepare proposed findings. Ultimately, the district court adopted many of the state's enumerated proposed findings of fact and conclusions of law nearly verbatim. But the district court also made minor additions and alterations to the same throughout its order and, most important, unequivocally rejected the state's contention that it had proved criminal damage to property as an underlying criminal act for a pattern of stalking conduct. This conclusion is reflected in several of the district court's findings, including a new paragraph explaining the district court's rationale. We conclude that the variations adequately demonstrate the district court's independent consideration of the case. Because this does not amount to nearly verbatim adoption, Tramble's argument is without merit. *See Anderson*, 470 U.S. at 572-73, 105 S. Ct. at 1510-11.

III.

Tramble summarily raises two additional issues in a pro se supplemental brief, alleging perjury by R.B. and questioning the sufficiency of the evidence to support the underlying criminal acts. Generally, we hold pro se litigants to the same standards as attorneys. *See Liptak v. State*, 340 N.W.2d 366, 367 (Minn. App. 1983). "An assignment of error in a brief based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (quotation omitted), *aff'd on other grounds*, 728 N.W.2d 243 (Minn. 2007). Because Tramble merely assigns errors without providing supporting facts, authorities, or arguments, and prejudicial error is not obvious on mere inspection, these issues are waived. *See id.*

Affirmed.