STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0845

State of Minnesota,
Respondent,

vs.

Lee Anthony Holmes,
Appellant.

Filed April 8, 2013
Affirmed
Hudson, Judge

Olmsted County District Court
File No. 55-CR-11-8649

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Kirk, Judge.

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

HUDSON, Judge

Appellant challenges his conviction of gross-misdemeanor domestic assault, arguing that (1) the district court abused its discretion by admitting statements contained

in a 9-1-1 call, (2) the evidence was insufficient to support his conviction, and (3) the district court committed reversible error by failing to issue written findings of fact. We affirm.

FACTS

The state charged appellant Lee Anthony Holmes with gross-misdemeanor domestic assault in violation of Minn. Stat. § 609.2242, subd. 2 (2010), as a result of an incident occurring between appellant and J.M., with whom he had a romantic relationship. After appellant waived his right to a jury trial, the district court conducted a bench trial.

J.M. testified that she and appellant were sitting in a car at a SuperAmerica gas station in Rochester while she was talking on her cell phone with a friend, G.B. She testified that after she and appellant argued about the radio volume, appellant started yelling at her and grabbed the phone, scratching her face, then threw the phone to the middle of the car. She testified that during the incident, she was "both mad and scared" and was afraid because appellant had physically assaulted her two or three times previously. She testified that she believed that appellant grabbed the phone intentionally, but did not scratch her intentionally. She testified that she then called G.B. back, G.B. asked her if she wanted the police called, and she said that she did.

J.M. and appellant went into a bank, where she had to conduct business, and she went to the restroom to clean the scratch on her face. After a bank employee asked if she needed help, she went into the manager's office and told the manager that things were not all right, and the police were coming. J.M. testified that she wanted the police called

because she was afraid that it would get "to the point of where there was hitting involved."

The state introduced relationship evidence of three previous incidents between appellant and J.M. In those incidents, respectively, appellant head-butted J.M. in her mouth; grabbed her chest, leaving a bruise; and hit her with a chair, leaving visible injuries. J.M. testified that at the time of the charged incident, she had obtained paperwork for filing an order for protection but had not yet filled it out.

G.B. testified that when she was on the phone with J.M., she heard loud music playing in the background, then yelling from both appellant and J.M., and then the phone went dead. She testified that after she spoke again with J.M., she called 9-1-1. The state offered a recording of the 9-1-1 call into evidence. Appellant challenged the entire contents of the call as hearsay and also objected to a number of G.M.'s statements within the call as, variously, without foundation, hearsay, speculative, and irrelevant. The district court overruled the objections without comment and admitted the recording of the entire call.

In the 9-1-1 call, G.B. told the dispatcher that appellant was "yelling and screaming, and I don't know if he's hit her or what he has done." She stated that appellant "is bipolar, schizophrenic," and "[o]h my God, you ought to hear him. . . . "[e]very other word is f—ker." G.B. also stated, "This guy has hit her before . . . she's never reported it," and "[t]his guy is crazy. I wish she could get him out of her house." G.B. continued, "He's already said he was going to kill her. I just know he's going to kill her . . . . He's been in prison before. He's hit her." She stated that J.M. told her that

when she asked appellant to turn down the music, he "went ballistic." G.B. testified that J.M. had previously told her about two of the three prior domestic violence-related incidents and after the incident involving the chair, J.M. had numerous bruises on her face, had difficulty moving her jaw, and had welt marks around her neck.

The bank manager testified that when J.M. was in her office, she was distraught and "shaking uncontrollably," although when J.M. first came in, she was "calm but scared." The responding Rochester police officer testified that J.M. told him that while she was calling G.B., appellant "went . . . crazy" and started screaming at her, grabbing the phone and disconnecting it. J.M. showed the officer the blank order-for-protection forms in her purse. The officer testified that J.M. stated that she came to the bank to seek safety, that she and appellant had an abusive relationship, and that appellant had beaten her and threatened to kill her in the past. On cross-examination, the officer testified that J.M. told him that appellant did not cause the scratch intentionally.

Appellant testified in his own defense that when he took the phone away from J.M., he did not intend either to hurt or scare her. He testified that she started the argument by making a comment about the radio, and she was angry because she believed he had been with another woman. He testified that when she was on the phone, he told her that he would throw it out the window, she then told him to do it, and he grabbed the phone and accidentally scratched her with it. He stated that he and J.M. sometimes argued when J.M. had been drinking, although she had not been drinking that day; that sometimes their arguments got loud, and people might think he was screaming, but he was just talking loudly; and that J.M. did not often wind up with physical or visible signs

of injury. He acknowledged J.M.'s injuries from the previous incidents, but testified that they did not happen in the manner portrayed.

The district court found appellant guilty. The district court did not issue written findings, but made oral findings on the record, including that an argument had "erupted" over the radio volume while J.M. was on the phone with G.B.; that appellant "became enraged" and grabbed the phone from J.M.; and that J.M. was "petrified." The district court found that appellant's conduct met all of the required elements of the charged offense, including intentionally committing an act with intent to cause fear in J.M. The district court sentenced appellant to 365 days, which was executed at appellant's request. This appeal follows.

D E C I S I O N

I

Appellant argues that the district court abused its discretion by admitting portions of G.B.'s 9-1-1 call. A defendant challenging the admission of evidence must prove both that the district court abused its discretion by admitting the evidence and that he or she was prejudiced by its admission. *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). If the district court erred by admitting evidence, and if a defendant's constitutional rights are implicated, an appellate court orders a new trial unless the state is able to show that the error was harmless beyond a reasonable doubt, which means that the verdict was surely unattributable to the error. *Id.* But "[w]hen the error does not implicate a constitutional right, a new trial is required only when the error substantially influenced the [fact-finder's] verdict." *Id.*

Appellant has not briefed on appeal his argument below that the contents of the entire 9-1-1 call, or a portion of it, amounted to hearsay. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (stating that issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997). But appellant has renewed his evidentiary challenges to some of G.B.'s statements within the call: that appellant was "bipolar," "schizophrenic," or "crazy"; that he was "going to kill [J.M.]"; that he had hit J.M. before, but it was not reported; and that he had previously been incarcerated.

Appellant first argues that G.B.'s comments about appellant's mental health were beyond the scope of G.B.'s knowledge as a lay witness and prejudicial. The Minnesota Rules of Evidence require that a witness testify only about matters shown to be within his or her personal knowledge. Minn. R. Evid. 602. A nonexpert witness may only testify as to opinions rationally based on his or her perception, which are helpful to a clear understanding of the testimony or determination of a fact at issue. Minn. R. Evid. 701. Although G.B.'s colloquial statement that appellant was "crazy" may have been permissible lay opinion testimony, her comments that appellant was "bipolar" and "schizophrenic" relate to medical conditions, for which the state laid no foundational basis, nor did the state demonstrate G.B.'s qualifications as an expert. We also agree with appellant that these statements were irrelevant to the issue of whether appellant assaulted J.M. *See* Minn. R. Evid. 401 (stating definition of relevant evidence). Therefore, these comments in the 9-1-1 call were improperly admitted.

Nonetheless, we cannot conclude that the improperly admitted remarks substantially influenced the district court's decision to find appellant guilty. The district

court did not refer to the comments in its findings, and the prosecutor did not refer to them in closing. We also recognize that in a bench trial, "a reviewing court should place great confidence in a judge's ability to follow the law and should not assume that evidence was considered for an improper purpose without a clear showing." *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009) (quotation omitted). Appellant has made no showing that the district court considered this evidence for an improper purpose, and its admission does not constitute reversible error.

Appellant also challenges the admission of G.B.'s statements that he had previously hit J.M. in an unreported incident and that, based on his prior conduct, G.B. "just kn[e]w he [was] going to kill [J.M.]." He points out that these statements were evidence of prior misconduct, which is generally not admissible to prove a defendant's character for the purpose of showing that he acted in conformity with that character. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998); Minn. R. Evid. 404(b). Although prior-bad-acts evidence may be offered for the limited purpose of showing motive, intent, absence of mistake or accident, identity, or a common scheme or plan, the state did not provide notice of, or fulfill the additional requirements for, offering such evidence. *See* Minn. R. Evid. 404(b). Therefore, the district court abused its discretion by admitting this evidence.

Appellant maintains that the prior-bad-acts evidence substantially influenced the district court's decision to convict him because in its oral findings, the district court observed that the character of the parties' previous relationship would be relevant to show whether appellant was "acting in conformity with probably some prior conduct that

he has engaged in." But the district court immediately followed this statement by referring to the three prior incidents of domestic assault, which were properly admitted as relationship evidence. *See* Minn. Stat. § 634.20 (2010) (stating standards for admission of "similar conduct by the accused against the victim of domestic violence"); *State v. Henriksen*, 522 N.W.2d 928, 929 (Minn. 1994) (stating that in domestic-abuse cases, evidence of a defendant's relationship with the victim is often admitted to place the alleged criminal conduct in context and assist the fact-finder in assessing the defendant's intent). Based on this record, we conclude that the statements relating to the prior unreported incident and G.B.'s fear that appellant would kill J.M. did not substantially influence the verdict.

Finally, appellant argues that the district court abused its discretion by admitting into evidence G.B.'s statement that appellant had previously been incarcerated. "[R]eferences to prior incarceration of a defendant can be unfairly prejudicial." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006); *see, e.g.*, *State v. Hjerstrom*, 287 N.W.2d 625, 628 (Minn. 1979) (concluding that district court committed error by allowing testimony referring to a defendant's time in prison). But when "a reference to a defendant's prior record is of a passing nature, or where evidence of guilt is overwhelming, a new trial is not warranted because it is extremely unlikely that the evidence in question played a significant role in persuading the [fact-finder] to convict." *State v. Clark*, 486 N.W.2d 166, 170 (Minn. App. 1992) (quotation omitted). Here, the brief reference in the 9-1-1 call to appellant's prior incarceration was not repeated, and the evidence of appellant's guilt was very strong. We conclude that the improper

reference did not have a substantial effect on the district court's decision, and that the errors in admitting evidence from the 9-1-1 call do not warrant a new trial.

II

This court reviews the sufficiency of the evidence to support a conviction by determining whether the record evidence and legitimate inferences drawn from that evidence would allow the fact-finder to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). In reviewing the sufficiency of the evidence, this court applies the same standard of review to bench trials and to jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). An appellate court will not overturn a guilty verdict "if, giving due regard to the presumption of evidence and the prosecution's burden of proving guilt beyond a reasonable doubt, the [fact-finder] could reasonably have found the defendant guilty of the charged offense." *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005).

The parties agree that appellant did not intentionally inflict bodily harm on J.M. when he grabbed the phone. Therefore, the state was required to prove beyond a reasonable doubt that he acted with intent to cause fear of immediate bodily harm in J.M. *See* Minn. Stat. § 609.2242, subd. 1(1) (2010) (stating that a person may be convicted of domestic assault if that person "commits an act with intent to cause fear in [a family or household member] of immediate bodily harm or death"); *see* Minn. Stat. § 518B.01, subd. 2(b)(7) (2010) (defining "persons involved in a significant romantic or sexual relationship" as "family or household members" for purposes of domestic abuse). Assault-fear is a specific-intent crime, which requires a finding that the actor intended to

cause the particular result of causing the victim to fear imminent bodily harm. *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). Intent may be proved by circumstantial evidence relating to the nature of the assault, surrounding events, and inferences drawn from the defendant's actions. *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001).

When evaluating convictions based on circumstantial evidence, Minnesota appellate courts use a two-step process. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, the court examines the circumstances proved, deferring to the fact-finder's acceptance of proof of those circumstances, based on recognition that the fact-finder is "in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony." *Id*. at 329 (quotation omitted). We then "independently examine the reasonableness of the inferences to be drawn from the circumstances proved." *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). In this examination, all of the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis negating guilt. *Andersen*, 784 N.W.2d at 329–30. But a rational hypothesis that negates guilt must be based on more than mere conjecture. *Id*. at 330.

Viewing the evidence in the light most favorable to the conviction, and deferring to the district court's credibility determinations, we identify the following circumstances proved: that appellant and J.M. were arguing over the radio volume; that appellant was extremely angry and yelling and screaming loudly at J.M.; that he grabbed the phone from J.M., scratching her face; and that J.M. was very scared. Appellant argues that

these circumstances are consistent with an alternative reasonable inference that he only wanted to end the phone call and express his thoughts about G.B.'s interfering behavior. He maintains that his mere act of grabbing the phone does not show that he intended to cause J.M. to fear immediate bodily harm. And he argues that because J.M. only expressed fear for the future, the circumstances did not support an inference that he intended to cause fear of harm when the incident actually occurred. But a fact-finder may infer that a person "intends the natural and probable consequences of his actions," and a defendant's testimony on his intentions is not binding if his actions show a contrary intent. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). The district court was also entitled to weigh the properly admitted relationship evidence, which would support an inference that appellant knew that his conduct would cause fear in J.M. We conclude that the circumstances proved were consistent only with a rational hypothesis that appellant acted with intent to place J.M. in fear of immediate bodily harm, and the evidence is sufficient to support his conviction.

III

Appellant also argues that the district court committed reversible error by failing to make written findings in connection with its finding of guilt. *See* Minn. R. Crim. P. 26.01, subd. 2(b) (stating that in a case tried without a jury, "[t]he court, within 7 days after making its general finding in felony and gross misdemeanor cases, must in addition make findings in writing of the essential facts"). This court reviews de novo interpretations of criminal rules. *State v. Nerz*, 587 N.W.2d 23, 24–25 (Minn. 1998).

The purpose of requiring written findings is to aid the appellate court in its review. *State v. Scarver*, 458 N.W.2d 167, 168 (Minn. App. 1990). "Particularized findings . . . ensure that prescribed standards are utilized by the [district] court, and . . . satisfy the parties that an important question is fairly considered and decided by the [district] court." *Reyes v. Schmidt*, 403 N.W.2d 291, 293 (Minn. App. 1987) (quotation omitted). But findings may be "gleaned from comments from the bench" as long as they "afford a basis for intelligent appellate review." *Scarver*, 458 N.W.2d at 168 (quotation omitted).

In certain circumstances, we have concluded that a district court's failure to issue written findings requires a remand to assure that the district court has fairly and fully considered the issue of the defendant's guilt. *See, e.g.*, *Scarver*, 458 N.W.2d at 168–69 (remanding for written findings when oral findings were "devoid of any facts upon which [appellate] court can conduct review"); *State v. Taylor*, 427 N.W.2d 1, 5 (Minn. App. 1988) (remanding for written findings when district court made oral findings, but only in response to the defendant's question at sentencing), *review denied* (Minn. Sept. 28, 1988). Here, although the district court made no written findings, it made oral findings on the record contemporaneously with its finding of guilt. The district court found that the state had proved each element of the charged offense, including that appellant committed an act with an intent to cause fear in J.M. *Cf.* Minn. R. Crim. P. 26.01, subd. 2(e) (stating that "[i]f the court omits a finding on any issue of fact essential to sustain the general finding, it must be deemed to have made a finding consistent with the general finding"). Because the district court's oral findings provide this court with an adequate

understanding of the basis for its decision, they are sufficient for appellate review, and we decline to order a remand for written findings.

Affirmed.