STATE OF MINNESOTA

IN SUPREME COURT

A19-0625

Scott County — Gildea, C.J.

State of Minnesota,

Respondent,

vs.

Filed: June 3, 2020
Office of Appellate Courts

Sergey Nikolaevich Balandin,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. The State presented sufficient evidence to support the jury's verdicts.

2. The district court did not commit reversible error in admitting the statements appellant made during police interviews because appellant implicitly waived his *Miranda* rights and did not unambiguously or unequivocally invoke his right to remain silent.

3. The district court violated Minn. Stat. § 609.04 (2018), when the court entered convictions on the offenses of first-degree domestic abuse murder and second-degree intentional murder.

Affirmed in part, reversed in part, and remanded.

O P I N I O N

GILDEA, Chief Justice.

Appellant Sergey Balandin appeals his convictions for first-degree premeditated murder, first-degree domestic abuse murder, and second-degree intentional murder. He argues that the evidence is insufficient to support the jury's verdicts. Balandin also argues that the district court erred in admitting statements he made during interviews with police, claiming that he did not waive his *Miranda* rights and that he invoked his right to remain silent. We conclude that the evidence is sufficient to support the jury's verdicts and that the district court did not commit reversible error in admitting the statements Balandin made during interviews with police. But the district court did violate Minn. Stat. § 609.04 (2018), when the court entered convictions on the offenses of first-degree domestic abuse murder and second-degree intentional murder in addition to the conviction for first-degree premeditated murder. We therefore affirm in part, reverse in part, and remand.

FACTS

On November 6, 2017, police found Ruzana Yedvabnik dead in the townhome where she lived with Balandin, Balandin's brother, N.B., and her mother. The law enforcement investigation and trial testimony revealed the following facts.

Between 2012 and 2017, Balandin and Yedvabnik lived together in a romantic relationship. During that time, several people witnessed evidence that Balandin was regularly assaulting Yedvabnik. On multiple occasions, Yedvabnik's mother witnessed Balandin hurt Yedvabnik. One time, Balandin hit Yedvabnik on the face. Another time, Balandin hit Yedvabnik while she was on the stairs, causing her to fall. On another occasion, her mother saw Yedvabnik on the floor with Balandin hovering above her. After Balandin and Yedvabnik would argue, Yedvabnik sometimes would have injuries, including bruises on her arms and face. The couple's arguments would become "physical" about "a couple times a month."

Yedvabnik and Balandin's mutual friend also witnessed evidence of abuse. The friend saw bruising on Yedvabnik's arms and legs, and Yedvabnik told the friend that Balandin hit her. Balandin also told the friend that he had broken Yedvabnik's arm by grabbing it with both hands and squeezing it until the bone snapped.

Yedvabnik's neighbor and coworker witnessed evidence of abuse as well. The neighbor saw Yedvabnik with a broken arm and the coworker saw Yedvabnik wearing a wrist splint. The neighbor also saw Yedvabnik with bruises or other injuries frequently, about once every 1 to 2 months. Yedvabnik's coworker saw Yedvabnik 2 to 3 times a month and "she was never without bruises." On one occasion, Yedvabnik showed up to work with a bruised eye and told her coworker that Balandin had given it to her.

In the fall of 2017, Balandin moved out of the townhome. While he was gone, Balandin suspected that Yedvabnik was having an affair with N.B. He shared his suspicion with the mutual friend in October 2017. When he moved back into the townhome on

November 2 or 3, 2017, he told N.B. that "I came back to f*ck your girlfriend." Shortly after he moved back in, Balandin's friend, T.S., witnessed Balandin accuse Yedvabnik of sleeping with N.B. Balandin told T.S. that "this may be one of the last times I see you."

On November 5, 2017, Balandin and Yedvabnik began arguing around 2 p.m. or 3 p.m. The argument stopped for a period and then resumed around 6 p.m. that evening. Balandin's other brother, V.B., was at the townhome that day until around 7 p.m. Sometime before he left, he witnessed Balandin scream at and push Yedvabnik.

At around 8 p.m., Yedvabnik's mother, who was downstairs, noticed water leaking from the ceiling. When she went upstairs, she saw Yedvabnik in the bathtub filled with water, pleading with Balandin, who was standing over her, to let her go. Balandin then picked Yedvabnik up and threw her back into the bathtub. Despite her mother's pleas, Yedvabnik would not allow her to call the police. Yedvabnik and Balandin eventually came downstairs to eat, drink, watch TV, and smoke.

After Balandin and Yedvabnik went back upstairs, around 10 p.m. or 11 p.m., the argument resumed. Yedvabnik's mother and N.B. could hear them yelling and throwing things at one another. A neighbor also heard the fight and testified that she heard "thumping" noises. It eventually grew quiet a few hours later, around 1 a.m. or 2 a.m.

Later that morning, Yedvabnik's mother saw Balandin. He told her he was going to work and that V.B. was going to pick him up. He had a black bag and sheet with him. He also told her that Yedvabnik was sleeping. He had locked the bedroom door.

Balandin called V.B. to ask him to pick him up at the townhome. When V.B. picked him up, Balandin told him to just drive, without specifying a location, and asked him for

money, which V.B gave to Balandin. V.B. observed that Balandin was "panicking." When Balandin refused to tell him what was going on, V.B. dropped him off at a nearby parking lot.

Balandin then called a friend to ask for a ride. The friend thought Balandin sounded "a little bit frantic." The friend agreed to pick up Balandin. On his way, the friend called V.B., who advised the friend not to pick up Balandin. When the friend called Balandin to tell him that he was not going to pick him up, Balandin said "something about something under a bed," that his "life is broke," that it was "nice knowing you," and "something about that she wasn't moving or something."

After speaking with Balandin, the friend texted several people. He texted that "Sergey just murdered his b*tch," "he's bleeding," "it came to knives," and "Dude said he shoved her under bed." One of the people the friend contacted encouraged him to notify the police, which he did. He informed police that he believed a homicide had taken place at the townhome's address and that Balandin was at a nearby hotel.

The police arrived at the townhome around 10:30 a.m. The police found Yedvabnik's body underneath the bed in the master bedroom. A short time later, police arrested Balandin outside of the hotel, where he was hiding in the bushes. Because he would not comply with police orders, police shot beanbag rounds at him.

Balandin had several items with him when he was arrested, including a bag that was leaking blood. Inside the bag, the police found a BB gun and a razor blade, as well as a broken and bloody electrical cord, a bloody charging cord, and blood-soaked clothing. After he was arrested, Balandin was transported to a local hospital.

Later that same day, November 6, 2017, a detective from the Shakopee police department and a special agent from the Bureau of Criminal Apprehension (BCA) went to the hospital room, where Balandin was being treated for his injuries. When they arrived, the detective activated a digital audio recorder and placed it near Balandin's hospital bed.

After the detective and BCA agent introduced themselves to Balandin, the detective read Balandin a *Miranda* warning. Balandin acknowledged each of his rights by responding either "mmHmm" or "uh-huh."[1] The detective then asked, "Okay, having those rights in mind, do you want to tell us what happened today? How you got hurt?" Balandin responded, "F*ck no. I don't even know how I got hurt. You guys found [me] in the bushes. You guys shot me. Then you brought me here."[2] Balandin then volunteered that he had epilepsy and that he had not been taking his medication. He also told them that he woke up that morning in the bathtub and then left the residence. In response to one question, Balandin became upset and said, "F*ck the system. You guys are f*cking stupid! Get the f*ck out of my face. I don't want to talk anymore." The detective responded, "Okay" and "Alright Sergey." Balandin then said, "Act all stupid like you don't know what happened. (Beeping Noise) What happened? Holy sh*t come one [sic] man! (Inaudible) the f*ck do you think you are, huh?" The detective asked two more questions

[1] The person who transcribed the recording wrote "MmHmm" to describe Balandin's responses. During the detective's omnibus-hearing testimony, he used "uh-huh" to describe the response.

[2] The arresting officers shot Balandin with beanbag rounds, not bullets.

before Balandin responded, "Okay, how bout this? Calm me the f*ck down, and I might talk to you a little bit different." The interview then ended.

A few hours later, Balandin was discharged from the hospital and transported to the Scott County jail. The detective and the BCA agent interviewed Balandin a second time at the jail. They did not read Balandin his *Miranda* rights again. Instead, the detective asked Balandin if he remembered that they had talked about his rights. Balandin responded, "Uh huh." Balandin then told them that the last thing he remembered before he woke up in the bathtub was having fun with Yedvabnik, which included "drinking," "sex, [and] laughing." Balandin confirmed that the scene was bloody when he woke up. He maintained that he did not know if Yedvabnik died the night before. When asked if he tried to render first aid when he saw Yedvabnik the next morning, he responded, "too late for that huh?" And in response to the question of how Balandin knew that Yedvabnik was dead, he responded, "(Inaudible) you seen her where she was right?"

Balandin also told the detective and the BCA agent that Yedvabnik's blood would be on his clothes because he tried to clean up the bedroom with household cleaners. He admitted that he "probably" put Yedvabnik underneath the bed. Balandin also asked who had contacted the police. The detective and the BCA agent would not tell him the person's name but told him that it was one of the people he had contacted that morning. The BCA agent then said, "You know people quiet [sic] honest with you are a little worried about (Inaudible) taken human life uh it's kind of a big deal." Balandin responded, "yeah but (Inaudible) it's the truth I mean . . . I told em like what the f*ck *it is what it is*." (Emphasis added.)

In addition to Balandin's statement, police gathered physical evidence during the murder investigation. Police investigators found blood all over the master bedroom, including the window blinds, ceiling, walls, furniture, bed, and carpet. Household cleaning products had been used in an unsuccessful attempt to clean the room. And police found a photo of Yedvabnik's dead body on Balandin's phone.

The medical examiner ruled the cause of Yedvabnik's death as "complex homicidal violence" because "multiple potentially lethal forms of injury" were present. Yedvabnik's injuries fell into three major categories: blunt force, ligature strangulation, and sharp force. Any one of the categories, or a combination of the categories, the medical examiner testified, could have been fatal.

The medical examiner concluded that Yedvabnik's death was "not an instantaneous death by any means." Yedvabnik sustained dozens of blunt-force injuries to her head, splitting the skin on her scalp and causing a traumatic brain injury. Her face was almost completely covered in bruises and her nose was broken. She also had bruises of different sizes on her chest. These blunt-force injuries, the medical examiner determined, took time to inflict and were the result of "multiple impact points." The medical examiner further concluded that, based on the size of the brain hemorrhage and the bruised tissue inside the chest cavity, "a significant amount of force" was used to inflict the injuries. The medical examiner also determined that the different-sized bruises on her chest showed that objects of varying sizes were used to inflict the injuries. Ligature marks on Yedvabnik's neck and face showed that she had been strangled with some sort of cord and that the cord had been put in several different places. The strangulation caused her eyes to hemorrhage.

Yedvabnik also had a cut running from her scalp to her tailbone that was so deep it exposed her kidney, rib, vertebrae, tendon, and layers of muscle. The jagged skin around the cut showed that it was a result of "multiple cut strokes."

The State indicted Balandin on first-degree premeditated murder, Minn. Stat. § 609.185(a)(1) (2018), first-degree domestic abuse murder, Minn. Stat. § 609.185(a)(6) (2018), and second-degree intentional murder, Minn. Stat. § 609.19, subd. 1(1) (2018). Balandin pleaded not guilty and demanded a jury trial.

Before trial, Balandin moved to suppress the statements he made to the detective and the BCA agent during the recorded interviews that took place at the hospital and jail. He did not argue that he invoked his right to remain silent or that the police failed to obtain a *Miranda* waiver. Instead, Balandin argued that his *Miranda* waiver was not knowing and voluntary because he was under stress, intoxicated, and in pain while at the hospital. He also argued that, by recording his interaction with medical personnel, the detective and BCA agent violated Minn. Stat. § 144.298, subd. 2 (2018), which prohibits the release of health records without the patient's consent.

Following a contested omnibus hearing, the district court denied Balandin's motion to suppress. The district court determined that after officers read Balandin the *Miranda* warning, he stated he understood his rights and spoke with them. The district court found that the officers did not subject Balandin to stress-inducing techniques, did not threaten him, and made sure that his physical needs were met. The court also found that law enforcement had an obligation to enter Balandin's exam room because Balandin was under

arrest for suspicion of a brutal murder, which outweighed the privacy interests protected by section 144.298, subdivision 2.

At trial, the State relied on Balandin's admission, "it is what it is," in the opening and closing statements. The statement showed, the State argued, that Balandin admitted killing Yedvabnik. The detective and BCA agent also testified during trial to Balandin's statements. And the State presented other evidence that was consistent with the facts outlined above.

The jury found Balandin guilty of first-degree premeditated murder, first-degree domestic abuse murder, and second-degree intentional murder. The district court entered judgment of convictions on all three offenses and sentenced Balandin to life in prison without the possibility of release on the offense of first-degree premeditated murder.

ANALYSIS

On appeal, Balandin argues that the State presented insufficient evidence to support the jury's verdicts. He also argues that the district court committed reversible error in admitting the statements he made during his interviews with police. We consider Balandin's arguments in turn.

I.

We turn first to Balandin's arguments regarding the sufficiency of the evidence. To determine whether sufficient evidence exists to support a jury verdict, we "view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting with that verdict." *State v. Chomnarith*, 654 N.W.2d 660, 664 (Minn. 2003). We will not overturn a verdict "if, giving due regard to the presumption of

innocence and to the prosecution's burden of proving guilt beyond a reasonable doubt, the jury could reasonably have found the defendant guilty of the charged offense." *Id.* When the evidence offered to prove the challenged element of the offense is circumstantial, our sufficiency of the evidence analysis involves two steps. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, we identify the circumstances proved, giving deference "to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *Id.* (citation omitted) (internal quotation marks omitted). Second, we consider whether "the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt." *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005). Keeping these standards in mind, we consider Balandin's challenges to the jury's verdicts.

A.

Balandin challenges the jury's guilty verdict on the offense of first-degree premeditated murder. According to Balandin, the State presented insufficient evidence on the element of premeditation because the circumstances proved are consistent with a rational hypothesis that he acted without premeditation.

To be guilty of first-degree murder, a person must "cause[] the death of a human being with premeditation and with intent to effect the death of the person or of another[.]" Minn. Stat. § 609.185(a)(1). Minnesota Statutes § 609.18 (2018) provides that " 'premeditation' means to consider, plan or prepare for, or determine to commit, the act referred to prior to its commission." Our precedent recognizes that "[p]remeditation

requires some amount of time to pass between formation of the intent and the carrying out of the act." *State v. Vang*, 774 N.W.2d 566, 583 (Minn. 2009) (citation omitted) (internal quotation marks omitted). In the absence of direct evidence, premeditation may be inferred from "planning activity, motive, the nature of the killing, and a defendant's actions following the killing." *State v. Cox*, 884 N.W.2d 400, 412 (Minn. 2016).

Here, the evidence the State offered to prove premeditation is circumstantial. We therefore begin our analysis by identifying the circumstances proved in connection with the element of premeditation.

Those circumstances show that Balandin and Yedvabnik lived together in a romantic relationship for several years. But in the fall of 2017, Balandin moved out of the townhome. While he was gone, Balandin suspected that Yedvabnik was having an affair with N.B. When Balandin moved back into the townhome on November 2 or 3, 2017, he told N.B. that "I came back to f*ck your girlfriend." Shortly thereafter, Balandin accused Yedvabnik of sleeping with N.B.

A day or two later, Balandin hit Yedvabnik dozens of times in the head with multiple objects. He strangled her with two different items—an electrical cord, which eventually broke, and a charging cord. He also used a knife to cut her from scalp to tailbone.

Before leaving the townhome, Balandin concealed Yedvabnik's body under the bed, attempted to clean up the blood, collected the BB gun and bloody cords, and then locked the bedroom door. Balandin was later found hiding in the bushes outside a hotel. Balandin was in possession of a bag containing a BB gun, a broken and bloody electrical cord, a bloody charging cord, a razor blade, and blood-soaked clothing.

As a result of Balandin's attack, Yedvabnik sustained dozens of blunt-force injuries to her head, splitting the skin on her scalp and causing a traumatic brain injury. She also had bruises of different sizes on her chest. These blunt-force injuries, the medical examiner determined, took time to inflict and were the result of "multiple impact points." The medical examiner further concluded that "a significant amount of force" was used to inflict the injuries, based on the size of the brain hemorrhage and the bruised tissue inside the chest cavity. The different-sized bruises on her chest showed that objects of varying sizes were used to inflict the injuries. Ligature marks on Yedvabnik's neck and face showed that she had been strangled with some sort of cord and that the cord had been put in several different places, indicating multiple attempts. The strangulation caused her eyes to hemorrhage. Yedvabnik also had a cut running from her scalp to her tailbone that was so deep it exposed her kidney, rib, vertebrae, tendon, and layers of muscle. The jagged skin around the cut showed that it was a result of "multiple cut strokes."

These circumstances proved are sufficient to sustain the first-degree premeditated murder conviction. The evidence shows planning. The fact that Balandin used one weapon, abandoned that weapon, and then selected, and used, a second and third weapon against the victim involves the type of mental processing that our precedent recognizes as planning activity. *See State v. Moore*, 846 N.W.2d 83, 89 (Minn. 2014) (noting that the circumstances proved supported the inference that the defendant retrieved the knife from the kitchen, which was roughly 10 feet away); *see also State v. Galvan*, 912 N.W.2d 663, 669 (Minn. 2018) (explaining that planning activity includes retrieving a weapon or ammunition); *State v. Frye*, 461 S.E.2d 664, 679 (N.C. 1995) (holding that premeditation

and deliberation may be inferred from the use of "a second deadly weapon, scissors, after the first [deadly weapon], a knife, broke from the force of his attack"); *State v. Leach*, 148 S.W.3d 42, 54 (Tenn. 2004) (noting that premeditation "may be inferred from the use of multiple weapons in succession").

The evidence shows motive. Balandin thought that Yedvabnik was involved with N.B. The couple also argued for several hours before her death. We have held that evidence that the relationship between the defendant and his girlfriend had deteriorated and that the defendant was jealous is sufficient to show he had motive to kill her. *Galvan*, 912 N.W.2d at 670–71 (relying on evidence that the victim told the defendant she was leaving him and taking their children to conclude that the defendant had motive); *State v. Hurd*, 819 N.W.2d 591, 601 (Minn. 2012) (determining that evidence of the defendant's jealousy, need for money, and altercation with his girlfriend the same day he murdered her was sufficient to show motive); *State v. Lodermeier*, 539 N.W.2d 396, 398 (Minn. 1995) (citing evidence that the defendant's relationship with his wife had deteriorated, that he was angry with her, and that they had fought the night before he murdered her in concluding that the jury could have reasonably inferred that the defendant premeditated her death).

The nature of this killing also supports an inference of premeditation. We consider "the number of wounds inflicted, infliction of wounds to vital areas, . . . [and] passage of time between infliction of wounds" to determine whether the nature of the killing supports premeditation. *State v. McArthur*, 730 N.W.2d 44, 50 (Minn. 2007); *see also Moore*, 846 N.W.2d at 90 (explaining that the victim was cut in her body's vital areas, including her neck). But "death from a series of blows cannot, alone, support a finding of

premeditation[.]" *State v. Swain*, 269 N.W.2d 707, 714 (Minn. 1978). Here, the brutality and duration of the attack are indicative of premeditation. Balandin injured Yedvabnik's vital organs during the rampage and he cut her open, from the bottom of her head down to her tailbone.

Finally, Balandin's actions after the murder support the jury's verdict that this was a premeditated killing. Before leaving the townhouse, Balandin concealed Yedvabnik's body under the bed, took a picture of the body, attempted to clean up the blood, collected the BB gun and bloody cords, and then locked the bedroom door. *See e.g.*, *Cox*, 884 N.W.2d at 414–15 (citing evidence that the defendant failed to render aid to the victim, who did not die instantly); *Hurd*, 819 N.W.2d at 600 (explaining that the defendant "attempted to clean the blood from [the victim]'s car"); *State v. Kendell*, 723 N.W.2d 597, 606 (Minn. 2006) (noting that the defendant paused to lock a door after the murder); *Leake*, 699 N.W.2d at 321 (noting that, after the murder, the defendant "disposed of evidence by putting it in garbage bags and burning it in a fire").

In sum, the circumstances proved support the jury's verdict on the first-degree premeditated murder conviction.

We turn now to Balandin's argument that those circumstances are also consistent with a reasonable inference that Balandin did not premeditate the killing. Balandin argues that there is no evidence of planning activity because the State did not prove that he brought the murder weapons into the bedroom in preparation for the attack. He also argues that there is no evidence of motive because the State did not prove that he threatened to kill Yedvabnik before her death. Finally, Balandin argues that the nature of the killing does

not support an inference of premeditation because the State proved only that he inflicted a number of non-fatal injuries. We disagree.

That the State did not prove that Balandin brought the weapons into the bedroom is immaterial because the State proved that Balandin consecutively used multiple deadly weapons over a period of time to inflict wounds to vital areas of Yedvabnik's body. Similarly, that the State did not prove that Balandin threatened to kill Yedvabnik before her death is immaterial because the State proved that Balandin believed Yedvabnik was having an affair with N.B., and this belief provides motive evidence.

Balandin relies on *Swain*, 269 N.W.2d 707, for his remaining argument that, because he inflicted a number of non-fatal injuries, the State failed to prove premeditation. In *Swain*, we held that the evidence that the defendant had (1) threatened to kill his mother ten months before her death, (2) attacked his mother from behind, and (3) struck her multiple times on the head was insufficient to support the first-degree premeditated murder verdict. 269 N.W.2d at 713–14. We determined that the evidence did not show that the defendant planned the attack and armed himself. *Id.* at 713–14. And we concluded that "death from a series of blows cannot, alone, support a finding of premeditation[.]" *Id.* at 714.

Balandin contends that the State proved only that he assaulted Yedvabnik, and then, citing *Swain*, asserts that this evidence, on its own, is insufficient to show premeditation.[3]

[3] Balandin also relies on *State v. Hyatt*, in which the court of appeals concluded that death by strangulation, on its own, does not support an inference of premeditation. 402 N.W.2d 614, 617 (Minn. App. 1987).

Balandin focuses on each category of injury separately, argues that each category was non-lethal, and concludes that Yedvabnik's death was the result of a "brutal assault." But premeditation "is often inferred from the totality of circumstances surrounding the killing." *State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008). Accordingly, Yedvabnik's injuries must be considered together in determining whether the nature of the killing supports an inference of premeditation. And as discussed above, Yedvabnik suffered multiple lethal injuries that were targeted at her vital areas and took time to inflict. Moreover, the medical examiner's inability to determine which injury caused Yedvabnik's death was due to the "multiple potentially lethal forms of injury present," not due to a lack of lethal injuries.

In sum, when viewed as a whole, the circumstances proved are consistent with the rational inference that Balandin acted with premeditation and inconsistent with any rational hypothesis other than guilt. We therefore hold that the State presented sufficient evidence on the element of premeditation.

B.

Balandin also challenges the second-degree intentional murder verdict, asserting that the State presented insufficient evidence on the element of intent. A person who "causes the death of a human being with intent to effect the death of that person or another, but without premeditation" is guilty of second-degree murder. Minn. Stat. § 609.19, subd. 1(1). The phrase "with intent to" "means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2018). Intent is inferred "from words and acts of the actor both before and after the incident." *See State v. Johnson*, 616 N.W.2d 720,

726 (Minn. 2000). And intent can be inferred from the nature and extent of the victim's wounds. *State v. Raymond*, 440 N.W.2d 425, 426 (Minn. 1989) (concluding that fatal cuts that severed a vein and artery, in addition to multiple stab wounds, showed intent to cause death); *see also Wolfe v. State*, 293 N.W.2d 41, 42 (Minn. 1980) (explaining that stabbing the victim with a long blade in the chest was sufficient evidence to support a finding of intent to kill).

Like premeditation, intent is a state of mind that is usually proved with circumstantial evidence. *Johnson*, 616 N.W.2d at 726. Accordingly, we apply the same analysis as we did above to determine whether the circumstantial evidence is sufficient to support the second-degree intentional murder verdict.

The circumstances proved, as discussed above, support the reasonable inference that Balandin intended to kill Yedvabnik. *See Moore*, 846 N.W.2d at 87 n.1 (explaining that the difference between premeditation and intent is that "premeditation requires evidence that the defendant formed the intent to kill and then deliberated on that decision"). Balandin inflicted numerous injuries that were potentially fatal.[4] He hit Yedvabnik dozens of times with different blunt-force objects, resulting in a large cut on her head as well as a traumatic brain injury. The multiple ligature marks on Yedvabnik's face and neck showed that Balandin made several attempts to strangle her. And he cut her so deeply from scalp

[4] Balandin's reliance on the statements he made during police interrogation—he fell asleep and "panicked" when he realized Yedvabnik was dead—is misplaced because those statements are not part of the circumstances proved. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017) ("In determining the circumstances proved, we disregard evidence that is inconsistent with the jury's verdict.").

to tailbone that he exposed her kidney, rib, vertebrae, tendon, and layers of muscle. The jagged skin around the cut showed that it was the result of multiple strokes.

When viewed as a whole, the circumstances proved are consistent with a reasonable inference that Balandin intended to kill Yedvabnik. And the brutality and duration of the attack do not leave room for any reasonable hypothesis other than that this was an intentional killing. We therefore hold that the State presented sufficient evidence on the element of intent.

C.

Balandin next argues that the State failed to present sufficient evidence of a past pattern of domestic abuse, and therefore the verdict for first-degree domestic abuse murder must be overturned. Because the State presented direct evidence of the domestic abuse, we apply the direct evidence standard: "[W]e view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting with that verdict." *Chomnarith*, 654 N.W.2d at 664.

A person who "causes the death of a human being while committing domestic abuse, when the perpetrator has engaged in a past pattern of domestic abuse upon the victim or upon another family or household member and the death occurs under circumstances manifesting an extreme indifference to human life" is guilty of first-degree murder. Minn. Stat. § 609.185(a)(6). Domestic abuse includes assault that is committed against a family or household member. Minn. Stat. § 609.185(e)(2) (2018). The definition of "[f]amily or household member" includes "persons who are presently residing together or who have resided together in the past." Minn. Stat. § 518B.01, subd. 2(b)(4) (2018).

For a defendant to be convicted of first-degree domestic abuse murder, the State must prove "not only that the defendant caused the death of the victim while committing domestic abuse, but also that domestic abuse had occurred previously to the extent that it was a 'past pattern.' " *Gulbertson v. State*, 843 N.W.2d 240, 245 (Minn. 2014). A "pattern" is "a regular way of acting by committing acts of domestic abuse." *State v. Robinson*, 539 N.W.2d 231, 237 (Minn. 1995). Although no specific number of incidents is required to establish a pattern, "a lone act of domestic abuse cannot constitute a pattern." *Gulbertson*, 843 N.W.2d at 245.

Balandin does not dispute that he caused Yedvabnik's death while committing domestic abuse. Rather, he argues that the State failed to prove that he engaged in a past pattern of domestic abuse. The State, Balandin contends, "relied chiefly on vague accusations of unseen and unheard assaults, or acts which weren't domestic assaults at all," and failed to establish a time frame for many of the alleged assaults. We disagree.

Yedvabnik's mother testified that, during the years that Balandin and Yedvabnik lived together, she witnessed Balandin assault Yedvabnik on four occasions, including the night before police found her body. V.B. also testified that he witnessed Balandin push Yedvabnik the night before her body was found. Furthermore, Yedvabnik's mother and N.B. each testified that Balandin and Yedvabnik's arguments turned physical about twice a month, and afterwards, Yedvabnik would sometimes have bruises on her arms and face.

Additional witnesses testified about the abuse. The mutual friend saw bruising on Yedvabnik's arms and legs, and Yedvabnik told the mutual friend that Balandin hit her. Balandin told the mutual friend himself that he had broken Yedvabnik's arm by grabbing

it with both hands and squeezing it until the bone snapped. Yedvabnik's neighbor saw her with a broken arm and Yedvabnik's coworker saw her with a wrist splint. The neighbor testified that she also saw Yedvabnik with bruises or other injuries frequently, about once every 1 to 2 months. And Yedvabnik's coworker testified that she saw Yedvabnik 2 to 3 times a month and that "she was never without bruises." When Yedvabnik came in to work with a bruised eye, she told her coworker that Balandin had given it to her.

Viewing all of this evidence in a light most favorable to the verdict, we hold that the State proved beyond a reasonable doubt that Balandin engaged in a past pattern of domestic abuse.[5]

II.

Balandin also argues that the district court erred by admitting at trial statements he made during interviews with police, claiming that he did not expressly or implicitly waive his *Miranda* rights and that he invoked his right to remain silent. The State, in response,

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[5] Balandin's contention that the evidence shows that his "most 'regular way of acting' " was " 'mostly verbal' fights," not "physical assaults," is unavailing because the proper inquiry is not whether domestic abuse is the *most* regular way of acting, but whether domestic abuse is "*a* regular way of acting[.]" *Robinson*, 539 N.W.2d at 237 (emphasis added). The fact that Balandin and Yedvabnik engaged in verbal fights more often than physical fights does not undermine the pattern of physical abuse proven by the testimony of witnesses who said that the verbal arguments turned physical a few times every month and who witnessed a total of five assaults, as well as those who saw Yedvabnik's injuries and were told, by either Yedvabnik or Balandin himself, that Balandin was responsible for them.

At trial, the State also relied on evidence that Balandin assaulted others, including Yedvabnik's mother, N.B., and the mutual friend. Because we conclude that the State proved beyond a reasonable doubt that Balandin engaged in a past pattern of domestic abuse against Yedvabnik, we need not consider Balandin's arguments about the assaults committed against Yedvabnik's mother, N.B., or the mutual friend.

contends that Balandin failed to argue in the district court that he did not expressly waive his *Miranda* rights or that he invoked his right to remain silent and therefore these arguments are forfeited. We turn first to Balandin's argument that he did not waive his *Miranda* rights.

A.

Balandin argues that he did not expressly or implicitly waive his *Miranda* rights. Balandin asserts that "[h]e did not answer 'yes' to any questions about understanding his rights" and therefore he did not expressly waive his rights. He also argues that he did not implicitly waive his rights. Although he does not assert that he did not understand his *Miranda* rights, he contends that he did not implicitly waive his rights because "[t]he detective never received a response that clearly conveyed comprehension, and a desire to waive *Miranda* and answer questions."

The State bears the burden of proving that Balandin knowingly and intelligently waived his *Miranda* rights. *State v. Fox*, 868 N.W.2d 206, 213 (Minn. 2015); *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995) ("If the police fully advise an accused of his *Miranda* rights, and the accused indicates that he understands his rights and nevertheless gives an incriminating statement, the state is deemed to have met its burden of proving that the accused knowingly and intelligently waived his rights."). Waivers can be explicit or implied from other conduct; for example, defendants implicitly waive their *Miranda* rights by "answering questions without hesitation or volunteering information in the absence of questioning." *State v. Merrill*, 274 N.W.2d 99, 106 (Minn. 1978), *abrogated on other grounds by State v. Dahlin*, 695 N.W.2d 588 (Minn. 2005); *see also Fox*, 868 N.W.2d at

214 (concluding that the defendant implicitly waived his *Miranda* rights based on the totality of the circumstances).

The record shows that Balandin implicitly waived his *Miranda* rights. After the detective read Balandin his rights at the hospital, Balandin spoke with him and the BCA agent and answered their questions. He eventually grew upset and said, "Calm me the f*ck down, and I might talk to you a little bit different. How bout that?" The detective and BCA agent then paused the interview and left. Balandin's statement shows that he was willing to talk to police at a later time. And when the detective and BCA agent resumed the interview at the jail and asked Balandin if he remembered talking about his rights at the hospital, Balandin responded, "Uh huh," and answered their questions. Balandin's conduct, taken as a whole, shows that he waived his *Miranda* rights, and therefore the district court did not err in admitting the statements.

But even if we were to determine that the district court erred, Balandin still would not be entitled to relief. Under the harmless-error standard, we determine whether an error was made, and if so, whether the error is harmless beyond a reasonable doubt. *See State v. Day*, 619 N.W.2d 745, 750 (Minn. 2000). An error is harmless beyond a reasonable doubt when "the verdict rendered is surely unattributable to the error." *Id.* (citation omitted) (internal quotation marks omitted).

Balandin correctly asserts that the State used his statement, "it is what it is," to establish a theme for the case and to argue in opening and closing statements that Balandin admitted to killing Yedvabnik. But the statement, "it is what it is," is not an admission of

guilt. The statement could be interpreted in numerous ways, including that Yedvabnik was dead and nothing could be done.

Balandin further argues that the BCA agent testified at trial about Balandin's "numerous admissions" in his interview with police. The agent testified that Balandin said that he had called a number of people after Yedvabnik's death. The agent further testified that Balandin described seeing Yedvabnik under the bed before he left, admitted that Yedvabnik's blood would be on his clothing, and said that he used household cleaners to clean up the scene.

But the State presented independent evidence that supported these same facts. The people Balandin called before his arrest testified about their conversations. Forensic scientists testified that they found a picture of Yedvabnik's dead body on Balandin's phone, the blood on Balandin's t-shirt matched Yedvabnik's, and household cleaning products had been used to clean the room. The jury verdicts were therefore surely unattributable to the statements Balandin made during his interviews with police.

Based on our analysis, we conclude that the district court did not err in admitting at trial statements Balandin made during police interviews because Balandin implicitly waived his *Miranda* rights. But even if the district court did err, any error was harmless.[6]

[6] Because the record shows that Balandin implicitly waived his *Miranda* rights, we need not consider whether he expressly waived his *Miranda* rights or the State's argument that he forfeited the express-waiver argument.

B.

We turn next to Balandin's argument that he invoked his right to remain silent. Because the State asserts that Balandin forfeited this argument, we first address the issue of forfeiture. We consider issues that are not raised in the district court but are raised for the first time on appeal to be forfeited. *State v. Beaulieu*, 859 N.W.2d 275, 278–79 (Minn. 2015).

Before trial, Balandin moved to suppress statements he made to police at the hospital and at the Scott County Jail. In his memorandum in support of his motion to suppress, he challenged the admissibility of the statements because he "did not knowingly and voluntarily waive his *Miranda* rights to remain silent and to have an attorney present." He argued that his waiver of *Miranda* rights was not knowing and voluntary because he was under stress, intoxicated, and in pain while at the hospital. He argued that his statements to police were involuntary for these same reasons.

On appeal, Balandin argues that he invoked his right to remain silent because he stated "f*ck no" and "get the f*ck out of my face. I don't want to talk anymore," in response to some of the police's questions. But Balandin never mentioned these statements in his memorandum in support of his motion to suppress or during the contested omnibus hearing. Furthermore, the district court did not address either statement in its order denying the motion to suppress. We therefore conclude that Balandin forfeited the argument that he invoked his right to remain silent.

But even if Balandin had raised the argument that he invoked his right to remain silent in the district court, he would not be entitled to any relief. To invoke one's right to

remain silent, a suspect must "articulate[] his desire to remain silent sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be an invocation of the right to remain silent." *Day*, 619 N.W.2d at 749. We have held "that nothing short of an unambiguous or unequivocal invocation of the right to remain silent will be sufficient to implicate *Miranda*'s protections." *Williams*, 535 N.W.2d at 285.

Balandin's argument that he invoked his right to remain silent rests on his responses of "f*ck no" and "get the f*ck out of my face. I don't want to talk anymore." But the context of those statements shows that they did not constitute an unambiguous and unequivocal invocation of his right to remain silent.

The first statement occurred after the detective asked Balandin, "Okay, having those rights in mind, do you want to tell us what happened today? How you got hurt?" Balandin responded, "*F*ck no*. I don't even know how I got hurt. You guys found [me] in the bushes. You guys shot me. Then you brought be [sic] here." (Emphasis added.) Although he began his response with "f*ck no," he continued and answered the detective's question about how he got hurt. This statement does not suggest that Balandin unambiguously and unequivocally invoked his right to remain silent.

The second statement occurred in the following exchange:

> [Detective]: When did you have a seizure?
>
> [Balandin]: "I have no f*cking idea. How can I know if I had a f*cking seizure? Right? I know when I had a seizure? You want me to (inaudible) f*cking twelve O five or some sh*t like that? I don't f*cking know man! I pissed myself! What the f*ck holy sh*t! F*ck the system. You guys are f*cking stupid! *Get the f*ck out of my face. I don't want to talk anymore.*
>
> (Beeping Noise)

[Detective]: Okay.

[Balandin]: Yup.

(Inaudible Noise)

(Beeping Noise)

[Detective]: Alright Sergey.

[Balandin]: Yup.

(Beeping Noise)

[Balandin]: Act all stupid like you don't know what happened.

(Beeping Noise)

[Balandin]: What happened? Holy sh*t come one [sic] man! (Inaudible) the f*ck do you think you are, huh?

[Detective]: Tell me happened then Sergey?

[Balandin]: Tell you what happened? I don't f*cking know what happened!

(Inaudible Noise)

[Balandin]: If I know, I would have f*cking told you! (Inaudible) recording and sh*t by the way. F*ck in A you guys come one [sic]. F*ck.

(Emphasis added.) This exchange shows that the detective and BCA agent stopped asking questions after Balandin said that he did not want to talk anymore. But Balandin continued to talk to the officers, indicating that he was not invoking his right to remain silent. Balandin therefore did not unambiguously or unequivocally invoke his right to remain silent.

Because Balandin implicitly waived his *Miranda* rights and did not unambiguously or unequivocally invoke his right to remain silent, we conclude that the district court did not commit reversible error by admitting Balandin's statements to police.

III.

Finally, although Balandin has not raised this issue on appeal, we conclude that the district court erred by convicting Balandin of first-degree domestic abuse murder and second-degree intentional murder, in addition to first-degree premeditated murder. Under Minn. Stat. § 609.04, subd. 1, a defendant "may be convicted of either the crime charged or an included offense, but not both." We have held that, under section 609.04, "a defendant may not legally be convicted of two counts of first-degree murder when both convictions are for the same offense, are on the basis of the same act, and involve the same victim." *State v. Reese*, 692 N.W.2d 736, 743 (Minn. 2005); *see also State v. Johnson*, 773 N.W.2d 81, 89 (Minn. 2009) (holding that the district court erred in convicting the defendant of two counts of first-degree murder and one count of second-degree intentional murder). We have also recognized that "every lesser degree of murder is an included offense." *State v. Zumberge*, 888 N.W.2d 688, 697 (Minn. 2017); *see also State v. Leinweber*, 228 N.W.2d 120, 125 (Minn. 1975). Accordingly, we remand to the district court to vacate the first-degree domestic abuse murder conviction and the second-degree intentional murder conviction, but otherwise leave the guilty verdicts for those counts in place.

CONCLUSION

For the foregoing reasons, we affirm the jury's verdicts but remand to the district court to vacate the convictions for first-degree domestic abuse murder and second-degree intentional murder.

Affirmed in part, reversed in part, and remanded.