

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0047**

State of Minnesota,
Respondent,

vs.

Lloyd Dale Johnson,
Appellant.

**Filed March 26, 2018
Affirmed
Kalitowski, Judge***

Clay County District Court
File No. 14-CR-15-4142

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

Brian J. Melton, Clay County Attorney, Pamela Harris, Assistant County Attorney, Lori
H. Conroy, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and
Kalitowski, Judge.

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

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Lloyd Dale Johnson challenges his convictions of attempted second-degree intentional murder, against six different victims: R.H., J.K., E.H., D.B., J.W., and M.B. Johnson argues that the evidence was insufficient to prove he had the specific intent to kill each of the victims and that the jury instructions were erroneous. Johnson also makes several pro se arguments. We affirm.

DECISION

I.

Johnson had the requisite specific intent to kill all six victims.

Johnson argues that there was insufficient evidence to prove he had the specific intent to kill all six victims. In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). Our task is to identify the circumstances proved, and assess inferences drawn from those circumstances to determine “whether the inferences leading to guilt are reasonable. . .[and] there are no other reasonable, rational

inferences that are inconsistent with guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010).

Both attempted second-degree murder and second-degree murder with intent, not premeditated, are specific-intent crimes. *State v. Bakdash*, 830 N.W.2d 906, 912, 915 (Minn. App. 2013). “[A] specific-intent crime requires an intent to cause a particular result.” *State v. Fleck*, 810 N.W.2d 303, 308 (Minn. 2012) (quotation omitted). Second-degree murder with intent requires proof that one “either had a purpose to kill [the victim] or believed that his actions, if successful, would kill.” *State v. Young*, 710 N.W.2d 272, 278 (Minn. 2006). Intent is rarely proved by direct evidence, it generally must be proved instead by drawing inferences from circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015).

Here, the circumstances proved are that Johnson and others went to an apartment where his ex-girlfriend, J.K., and her current boyfriend, R.H., lived. Both were present at the apartment at the time, along with four friends. Johnson brought a gun and, for the purpose of this appeal, concedes he was one of two shooters. Shots were fired both through the apartment’s front door and, once that door was opened, into the apartment. Ballistics evidence indicated that two different firearms were used. Casings and bullets from the guns were recovered in different parts of the small apartment. There is evidence that both guns were fired in Johnson’s ex-girlfriend’s direction, where she was sitting on a couch with one friend. There is evidence a gun was shot at the kitchen table, where one friend was sitting and another was standing. There is evidence that a gun was shot into the apartment hallway where R.H. and another friend were standing. There were bullet holes

through the apartment's front door, and in the ceiling of the apartment, through walls in the bedroom, and a spent bullet in the bedroom. There was another casing at the entrance to the apartment building.

The state was unable to prove which gun Johnson fired, but because there was evidence both guns were fired in his ex-girlfriend's direction, Johnson concedes that the state could prove he had the requisite specific intent to kill his ex-girlfriend. But he argues the state cannot prove he had specific intent to kill each of the other five victims, because there was only proof that one of the two guns was shot near each of them, and because there is only ballistics proof showing that each gun was fired either three or five times. We are not persuaded.

Johnson would have this court focus on which gun was his, and how many casings and bullets were found at the scene, ignoring the evidence presented to the jury that Johnson shot into a small apartment where he knew multiple individuals would be present. Johnson knew his ex-girlfriend and her current boyfriend lived at the apartment. Prior to arriving at the apartment, one of Johnson's companions spoke on the phone with one of the friends, D.B., who was present at the apartment at the time. Another of Johnson's companions testified that he believed a party was going on at the apartment, implying multiple people would be present. And yet another companion testified that R.H. would likely have called friends to come over to the apartment because of an altercation with another of Johnson's companions earlier in the evening. Guns were fired first through the apartment's front door, with no regard for who might be hit. Guns continued to be fired at victims when that door opened and all six victims were located in places that, based on the diagrams in

evidence, would have been visible from the doorway where Johnson was standing. The probable consequence of Johnson's actions in shooting either of the two guns here would be to potentially kill any of the individuals present. Therefore, we conclude that there was sufficient evidence to demonstrate to the jury that Johnson had the requisite specific intent to kill all six victims.

We find support for our conclusion in a case with similar facts decided by the Minnesota Supreme Court. In *State v. Hough*, the defendant fired multiple shots into his school principal's home and was convicted for one count of assault with a deadly weapon for each person who was in the home at the time. 585 N.W.2d 393, 394-95 (Minn. 1998). The supreme court affirmed the conviction, holding that "[w]hen an assailant fires numerous shots from a semiautomatic weapon into a home, it may be inferred that the assailant intends to cause fear of immediate bodily harm or death to those within the home." *Id.* at 397. It also held that the "natural and probable consequence" of the defendant's actions would endanger others. *Id.*

Assault-fear is a specific intent crime, just like attempted second-degree intentional murder. *Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). Therefore just as in *Hough*, the specific intent needed to kill each of the six victims present in the apartment can be inferred since potentially killing each of those individuals would be a natural and probable consequence when firing a gun into a small apartment where six people were present. These facts are sufficient for the jury to conclude that he had the specific intent to kill each of the six people present.

Because Johnson argues that he did not have the specific intent to kill all six victims, he argues he could only be culpable for attempted second-degree murder against each of them if the state had argued transferred intent or charged him with aiding and abetting. Because we conclude that Johnson had the requisite specific intent to kill each of the six victims without this theory or additional charges, we do not address these arguments.

II.

Jury instructions were not erroneous.

Johnson argues that the instructions provided to the jury were in error because they omitted an element of the crimes and therefore lowered the state's burden of proof, and because the instructions implicitly incorporated transferred intent. Johnson argues that the instructions allowed the jury to convict him of attempted murder against each victim, as long as the jury found he had the intent to kill any of the six victims. We disagree.

District courts are given "considerable latitude in choosing jury instructions." *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007) (internal quotation marks omitted). When this court reviews jury instructions for error, the instructions are reviewed in their entirety to determine whether they fairly and adequately explain the law. *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). Only an instruction that materially misstates the law is error. See *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001). Because these instructions were not objected to at trial, this court applies a plain-error analysis. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). "To establish plain error, an appellant must show that a district court's ruling (1) was error, (2) that the error was plain, and (3) that the error affected appellant's substantial rights." *Ihle*, 640 N.W.2d at 916.

We begin by determining whether there was error. The jury instruction at issue here included the names of each victim in this context:

First, the defendant intended to commit the crime of murder in the second degree of [victim's name]. Statutes of Minnesota provide that a person who intentionally causes the death of another, but without premeditation, is guilty of murder in the second degree. To find the defendant acted intentionally, you must find that the defendant acted with the purpose of causing death or believed the act would have that result.

These instructions were repeated six different times, with each of the six victims' names inserted. Although on appeal Johnson would have preferred the victims' names be restated within the elements of second-degree murder, we conclude that the listing of each name at the beginning of each instruction, with a full instruction for each victim, was sufficient to require the jury to find Johnson intended to kill each particular victim. The unobjected-to jury instructions provided were not erroneous.

Johnson also argues that the instruction implicitly incorporated transferred intent. We disagree. The record indicates that the district court specifically excluded language in the instruction that would have incorporated a transferred intent theory.

Transferred intent “is the principle that a defendant may be convicted if it is proved he intended to injure one person but actually harmed another.” *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006) (quoting 9 Harry W. McCarr & Jack Nordby, *Minnesota Practice* § 44.8 (3d ed. 2001)). Here, the state did not rely on a theory of transferred intent but instead argued Johnson had specific intent to kill each of the six victims. Johnson requested that the words “or another” be struck from the jury instructions that originally read: “First, the defendant intended to commit the crime of murder in the second degree of [victim's

name] *or another*.” It is the phrase “or another” that embodies the theory of transferred intent in the second-degree murder elements. *See State v. Sutherlin*, 396 N.W.2d 238, 240 (Minn.1986) (explaining that language of Minn. Stat. § 609.185 incorporates the doctrine of transferred intent). The district court granted Johnson’s request and those words were removed.

Because jury instructions were provided for each individual victim and listed that individual victim’s name, and because language that could incorporate transferred intent into the jury instructions was removed at Johnson’s request at trial, we conclude there was no error in the jury instructions. Because we hold there was no error, we need not address the other elements of clear error.

III.

Johnson’s pro se arguments fail.

Johnson submitted a pro se brief arguing the state committed prosecutorial misconduct, that he received ineffective assistance of counsel, and that the district court erred in allowing in relationship evidence between him and his ex-girlfriend, and him and R.H. Both his prosecutorial misconduct and ineffective assistance of counsel claims are based on statements he asserts were made by the state and his counsel at trial. The record does not support that either statement was made, and we therefore do not address those arguments.

The district court allowed introduction of relationship evidence under Minnesota Statutes section 634.20 (2016). Evidentiary rulings are reviewed for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). The court allowed Johnson’s ex-

girlfriend to testify that Johnson previously strangled and punched her, and that she had a no-contact order against him. This evidence was properly admitted because it was previous domestic conduct, which can include “the infliction of fear of imminent physical harm, bodily injury, or assault” and against a household member. because Johnson and his ex-girlfriend have children together. Minn. Stat. § 518B.01, subd. 2(a)(2), (b)(5) (2016). The evidence is probative because it “illuminate[s] the relationship between the defendant and the alleged victim” and places a crime in the context of that relationship. *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010). And the court provided limiting instructions to the jury, which lessen the “probability of undue weight being given by the jury to [relationship] evidence.” *State v. Ware*, 856 N.W.2d 719, 729 (Minn. App. 2014) (quotation omitted).

The court also allowed R.H. to testify that Johnson had threatened both him and J.K. regarding guns and shooting at their home. This evidence was admitted as relationship evidence, evidence that has “generally been used to describe any evidence that is offered to illuminate the relationship between the accused and the alleged victim.” *State v. Bell*, 719 N.W.2d 635, 638 n.4 (Minn. 2006). Specifically, it can provide context where there is a strained relationship with a former romantic partner, and that former partner’s new romantic partner, as is the case here. *See State v. Loving*, 775 N.W.2d 872, 880 (Minn. 2009) (The district court properly admitted relationship evidence of threats against the defendant’s ex-girlfriend’s current boyfriend, when both the ex-girlfriend and her current boyfriend were victims in the case.). Johnson argued there was no clear and convincing evidence the threats actually took place as required to admit evidence of prior bad acts,

including those admitted as strained relationship evidence. *State v. Buggs*, 581 N.W.2d 329, 336 (Minn. 1998). But because R.H. testified to the threats, this argument is without merit.

We conclude that the district court acted within its discretion to allow relationship evidence between Johnson and J.K. and R.H.

Affirmed.