

*This opinion will be unpublished and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
A17-0711**

State of Minnesota,
Respondent,

vs.

Phillip D. Mallett, Jr.,
Appellant.

**Filed April 30, 2018
Affirmed
Peterson, Judge**

Stearns County District Court
File No. 73-CR-16-5734

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

Janelle P. Kendall, Stearns County Attorney, Hannah J. Prokopowicz, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his conviction of misdemeanor domestic assault, appellant argues that (1) the circumstantial evidence was insufficient to prove that he intended to

cause fear of bodily harm and (2) the district court committed plain error that affected his substantial rights when it admitted relationship evidence of his prior domestic conduct under Minn. Stat. § 634.20 (2014). We affirm.

FACTS

Appellant Phillip D. Mallett, Jr., and the victim, A.A.S., began dating in December 2015 and began living together in early 2016. In late May 2016, Mallett shoved A.A.S. into a chair when he was angry and told her to go to her mother's or things would get violent. In June 2016, when Mallett began having his three-year-old daughter stay with him and A.A.S. 50% of the time, Mallett told A.A.S. that if she caused him to lose his daughter, he would cause her to lose her daughter, who lived with them. On June 17, 2016, Mallett was angry because A.A.S. did not want his daughter to sleep in their bed. Mallett lifted up and dropped the couch that A.A.S. was sleeping on, began arguing with her, and threw a bar stool at her.

On Mallett's daughter's birthday, June 20, 2016, A.A.S. had planned to spend the day with Mallett and the girls and then meet up with a friend during the evening. A.A.S. explained that she expected that the birthday celebration would be "something simple, getting a cake and going to the park or something." When Mallett got home from work at about 6:30 a.m. on June 20, he quickly got angry about A.A.S.'s evening plans and began yelling at her, and they argued for much of the morning. During the argument, Mallett began recording A.A.S. with his cell phone, and A.A.S. went into another room because she did not want to be recorded. A short time later, thinking that the argument had ended, A.A.S. went into the kitchen to talk to Mallett. When A.A.S. entered the kitchen, Mallett

picked up his daughter and began recording A.A.S. again. A.A.S. approached Mallett and tried to grab his phone away from him. Mallett “swung” the phone out of A.A.S.’s hand and accidentally struck his daughter in the head in the process.

As A.A.S. turned to pick up her daughter, Mallett clenched his fist at A.A.S. Mallett brought his fist up from his side like he was about “to throw a punch.” A.A.S. thought that Mallett was going to hit her, and she turned and ducked, but Mallett did not follow through with hitting her. As A.A.S. backed out of the kitchen, Mallett punched a closet door that was within five feet of her, which put a hole in the door and caused it to fall down. Mallett picked up the closet door and put it back and told A.A.S. that it would be her face next time.

When A.A.S. finished getting her daughter ready for the day, she left the residence, called 911, and went to the police station. After taking a statement from Mallett and examining the scene, Officer Daniel Nelson arrested Mallett, and, based on the incident on June 20, Mallett was charged with one count of misdemeanor domestic assault with intent to cause fear of bodily harm, in violation of Minn. Stat. § 609.2242, subd. 1(1) (2014).

At trial, the district court admitted evidence of the May 2016 and June 2016 incidents. Mallett made a pretrial objection to the evidence, the district court made a preliminary ruling that it was admissible, and the record does not show that Mallett renewed his objection when the evidence was admitted. Before admitting the evidence, the district court instructed the jury that the evidence was offered for the limited purpose of showing the nature and extent of the relationship between Mallett and A.A.S. to assist the jury in determining whether Mallett committed the charged offense and that Mallett

was not being tried for and could not be convicted of any other behavior. The district court also gave a limiting instruction during closing instructions.

The jury found Mallett guilty as charged. This appeal followed sentencing.

D E C I S I O N

I.

A defendant who “commits an act with intent to cause fear in another of immediate bodily harm” is guilty of domestic assault. Minn. Stat. § 609.2242, subd. 1(1). Mallett does not dispute that he committed an act that caused fear when he punched the closet door. He argues, however, that the evidence was insufficient to prove that he intended to cause A.A.S. fear of bodily harm.

When considering a claim of insufficient evidence, this court carefully examines “the record to determine whether the evidence, when viewed in a light most favorable to the conviction,” was sufficient to allow the fact-finder to reach the verdict that it reached. *State v. Caine*, 746 N.W.2d 339, 356 (Minn. 2008) (quotation omitted). We must assume that the fact-finder believed the state’s witnesses and did not believe any contrary evidence. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). We will not disturb the verdict if the fact-finder, “acting with due regard for the presumption of innocence” and the requirement of “proof beyond a reasonable doubt, could reasonably conclude that [the] defendant was proven guilty of the offense charged.” *State v. Hanson*, 800 N.W.2d 618, 621 (Minn. 2011) (quotation omitted).

“Intent must be determined from all the objective facts and circumstances, including the defendant’s conduct and/or statements at the time of the act.” *State v.*

Whisonant, 331 N.W.2d 766, 768 (Minn. 1983). “Because intent is a state of mind,” it is generally proved by circumstantial evidence. *State v. Essex*, 838 N.W.2d 805, 809 (Minn. App. 2013), *review denied* (Minn. Jan. 21, 2014). “A conviction based on circumstantial evidence . . . warrants stricter scrutiny.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). A conviction based on circumstantial evidence requires that the circumstances proved be consistent with a defendant’s guilt and inconsistent with any other rational or reasonable hypothesis. *State v. Clark*, 755 N.W.2d 241, 257 (Minn. 2008).

To determine whether the circumstances proved are consistent with a defendant’s guilt and inconsistent with any other rational or reasonable hypothesis, the court applies a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, the court determines the circumstances proved, giving due deference to the fact-finder and construing the evidence in the light most favorable to the verdict. *Id.* at 598–99. Second, the court determines whether the circumstances proved are consistent with guilt and inconsistent with any other rational or reasonable hypothesis. *Id.* at 599. This analysis requires that the court look at the circumstances proved not as isolated facts but rather as a “complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt.” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). This analysis gives “no deference to the fact finder’s choice between reasonable inferences.” *Silvernail*, 831 N.W.2d at 599 (quotation omitted).

Mallett argues that he punched the closet door out of anger and frustration over A.A.S. having made plans with a friend instead of celebrating his daughter’s birthday with the family, not because he wanted to cause A.A.S. fear of bodily harm. Mallett’s argument,

however, ignores A.A.S.'s testimony that, during the argument on June 20, Mallett clenched his fist and raised it as if he was about to punch her, and she turned and ducked.

A person acts “with intent to” cause fear of immediate bodily harm if he “either has a purpose to . . . cause the result specified or believes that the act, if successful, will cause that result.” See Minn. Stat. § 609.02, subd. 9(4) (2014) (defining mental states, including “[w]ith intent to”). “Intent may be inferred from events occurring before and after the crime and may be proved by circumstantial evidence.” *State v. Rhodes*, 657 N.W.2d 823, 840 (Minn. 2003). A victim’s reaction to an act is circumstantial evidence that is relevant to intent. See *State v. Schweppe*, 306 Minn. 395, 401, 237 N.W.2d 609, 614 (1975) (stating that victim’s reaction to threat “was circumstantial evidence relevant to the element of intent”).

The only reasonable inference from the evidence that Mallet raised his fist to A.A.S., and she turned and ducked, is that Mallett intended to cause fear of immediate bodily harm. See *Nelson v. State*, 880 N.W.2d 852, 860 (Minn. 2016) (“Intent can be inferred from the idea that a person intends the natural consequences of his or her actions.” (quotation omitted)). Even without the relationship evidence, the circumstantial evidence was sufficient to prove intent.

II.

Because Mallett did not renew his objection to the relationship evidence at trial, this court reviews the admission of the evidence for plain error. *State v. Word*, 755 N.W.2d 776, 783 (Minn. App. 2008). Under the plain-error test, the defendant must show that there was (1) error, (2) that was plain, and (3) that affected appellant’s substantial rights. *State*

v. *Vick*, 632 N.W.2d 676, 685 (Minn. 2001). If this court concludes that any of the requirements of the plain-error test are not satisfied, it need not consider the others. *State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012).

“An error is plain if it is ‘clear’ or ‘obvious.’” *State v. Milton*, 821 N.W.2d 789, 807 (Minn. 2012). Minn. Stat. § 634.20 governs the admissibility of domestic-conduct evidence in domestic-violence cases. Under Minn. Stat. § 634.20, the district court may admit evidence of similar conduct by the accused against the victim of domestic abuse if the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, confusion, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004).

“Evidence presented under section 634.20 is offered to demonstrate the history of the relationship between the accused and the victim of domestic abuse.” *State v. Barnslater*, 786 N.W.2d 646, 650 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010). The supreme court has recognized “the inherent value of evidence of past acts of violence committed by the same defendant against the same victim.” *State v. Williams*, 593 N.W.2d 227, 236 (Minn. 1999).

Mallett argues that the admission of the relationship evidence was plain error because it had low probative value as to Mallett’s intent and that any probative value was substantially outweighed by the danger of unfair prejudice given the close proximity in time between the charged offense and the earlier conduct. In *State v. Meyer*, 749 N.W.2d 844, 849 (Minn. App. 2008), the victim’s credibility was at issue, and the appellant asserted

that the domestic-conduct evidence led the jury to find him guilty based on past conduct rather than on evidence of the current charged offenses. This court determined that “the three prior acts of domestic violence . . . provided a context in which to examine [the victim’s] credibility.” *Id.*; see also *State v. Lindsey*, 755 N.W.2d 752, 757 (Minn. App. 2008) (noting that relationship evidence has “significant probative value in assisting the jury to judge witness credibility”). As in *Meyer* and *Lindsey*, proof of Mallett’s intent turned on the jury’s assessment of A.A.S.’s credibility, and the relationship evidence had significant probative value in assessing witness credibility. It is not apparent why the temporal proximity of the charged offense and the earlier conduct would cause the jury to improperly consider the relationship evidence.

Citing *State v. Hormann*, 805 N.W.2d 883, 891 (Minn. App. 2011), *review denied* (Minn. Jan. 17, 2012), Mallett also argues that the probative value of the relationship evidence was substantially outweighed by the danger of unfair prejudice because it painted him as a physical abuser and created the risk that the jury would determine his intent in punching the closet door based on his past acts rather than his actual intent on June 20. In *Hormann*, this court concluded that the district court erred in admitting testimony that the defendant, “during a 20–year marriage, broke every door in the couple’s home, broke the walls, physically abused his wife, engaged in ‘a lot of violence,’ was ‘very angry,’ ‘controlled all the money,’ didn’t want his wife to have friends, and continually subjected her to humiliating, controlling, and hostile behavior.” *Id.* This court stated that the evidence “was only marginally relevant to establish why [appellant’s wife] believed her car was being tracked by appellant” and that “the testimony – which is devoid of detail as

to time, place, circumstance, or context – presents the risk of leading the jury to improperly conclude that appellant has a propensity to behave criminally and should . . . be convicted, and punished, for the charged offenses.” *Id.* Unlike the evidence in *Hormann*, A.A.S.’s testimony about Mallett’s prior conduct was specific as to time, place, circumstances, and context.

Admission of relationship evidence requires a balancing test, and we find no basis to conclude that the district court erred in applying that test.

Affirmed.